

1 FOR THE PLAINTIFF:

Mr. Martin J. Black
Mr. Kevin M. Flannery
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, Pennsylvania 19104

Mr. Joseph M. Abraham
Mr. Timothy F. Dewberry
Mr. Joshua J. Yi
Mr. Jacob R. Porter
DECHERT LLP
300 West Sixth Street
Suite 2010
Austin, Texas 78701

Ms. Nisha N. Patel
Mr. Ryan T. Banks
DECHERT LLP
2440 W. El Camino Real
Suite 700
Mountain View, California 94040

13 FOR THE DEFENDANTS:

Mr. Douglas M. Kubehl
Mr. Jonathan B. Rubenstein
Mr. Jeffery S. Becker
BAKER BOTTS LLP
2001 Ross Avenue
Dallas, Texas 75201

Ms. Melissa R. Smith
GILLAM & SMITH LLP
303 South Washington Avenue
Marshall, Texas 75670

Mr. Asim M. Bhansali
KWUN BHANSALI LAZARUS LLP
555 Montgomery Street
Suite 750
San Francisco, California 94111

1 P R O C E E D I N G S

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Be seated, please.

5 All right. Are either Plaintiff or Defendant
6 aware of anything that should be taken up with the Court
7 before I bring the jury in and proceed with my preliminary
8 instructions?

9 Are you aware of anything, Mr. Ward?

10 MR. WARD: I am not, Your Honor.

11 THE COURT: Are you aware of anything, Mr. Kubehl?

12 MR. KUBEHL: I am not, Your Honor.

13 THE COURT: All right. Let's bring in the jury,
14 please.

15 COURT SECURITY OFFICER: All rise.

16 (Jury in.)

17 THE COURT: Welcome back, ladies and gentlemen.
18 Please have a seat.

19 Ladies and gentlemen of the jury, I now have some
20 preliminary instructions that I need to give you before we
21 begin with the opening statements from the lawyers and then
22 get on to the evidence.

23 You have now been sworn as the jurors in this
24 case, and as the jury, you are the sole judges of the
25 facts, and as such, you will decide and determine what all

1 the facts are in this case.

2 As the judge, I will give you instructions on the
3 law, I will decide questions of law that might arise during
4 the trial, I'll handle any matters of evidence and
5 procedure, and I'll oversee the flow of the evidence and
6 maintain the decorum of the courtroom.

7 At the end of the evidence, I'll give you detailed
8 instructions about the law that you are apply -- are to
9 apply in deciding this case. And I'll give you a list of
10 questions that you are then to answer.

11 This list of questions is called the verdict form,
12 and your answers to those questions need to be unanimous,
13 and those unanimous answers to those questions will
14 constitute the jury's verdict in this case.

15 Now, let me briefly tell you what this case is
16 about. This involves a dispute regarding three separate
17 United States patents.

18 I know that you saw the patent video film earlier
19 today, but I need to give you these instructions here and
20 now and on the record about a patent and how one is
21 obtained.

22 Patents are either granted or denied by the United
23 States Patent and Trademark Office, sometimes called for
24 short simply the PTO. The United States Patent and
25 Trademark Office is an agency of the United States

1 Government.

2 A valid United States patent gives the holder of
3 the patent the right, for up to 20 years from the date the
4 patent application is filed, to prevent others from making,
5 using, offering to sell, or selling the patented invention
6 within the United States or from importing it into the
7 United States without the patentholder's permission.

8 A patent is a form of property called intellectual
9 property, and like all other forms of property, a patent
10 can be bought and sold.

11 A violation of a patentholder's rights is called
12 infringement. The patentholder may try to enforce a patent
13 against persons it believes to be infringers by filing a
14 lawsuit in federal court, and that's what we have in this
15 case.

16 The process of obtaining a patent is called patent
17 prosecution. To obtain a patent, one must first file an
18 application with the PTO.

19 As I mentioned, the PTO is an agency of the
20 United States Government, and it employs trained examiners
21 who review applications for patents.

22 The application that is submitted to the PTO
23 includes what is called a specification. The specification
24 contains a written description of the claimed invention
25 telling what the invention is, how it works, how to make

1 it, and how to use it.

2 The specification concludes or ends with one or
3 more numbered sentences. These numbered sentences are
4 called the patent claims.

5 When a patent is granted by the PTO, it's the
6 claims in the patent that define the boundaries of its
7 protection and give notice to the public of those
8 boundaries.

9 Patent claims may exist in two forms referred to
10 as independent claims and dependent claims.

11 An independent claim does not refer to any other
12 claim in the patent. It's independent. It's not necessary
13 to look at any other claim to determine what an independent
14 claim covers.

15 On the other hand, a dependent claim refers to at
16 least one other claim in the patent. A dependent claim
17 includes each of the limitations or elements of that other
18 claim or claims from which it depends or to which it
19 refers, as well as those additional limitations recited
20 within the dependent claim itself.

21 Accordingly, to determine what an independent
22 claim covers, it's necessary to look at both the dependent
23 claim itself and the independent claim or claims from which
24 it refers, or as we sometimes say, from which it depends.

25 The claims of the patents-in-suit use the are word

1 comprising. Comprising means including or containing.

2 A claim that includes the word comprising is not
3 limited to the methods or devices having only the elements
4 recited in the claim but also covers methods or devices
5 that add additional elements.

6 Take, for example, a claim that covers a table.
7 If a claim recites a table comprising a tabletop, legs, and
8 glue, then the claim will cover any table that contains
9 these three structures, even if the table also includes
10 other structures, such as a leaf to go on the tabletop or
11 wheels to go on the ends of the legs.

12 Now, that's a very simple example using the word
13 comprising and what it means. In other words, ladies and
14 gentlemen, it can have other features in addition to those
15 that are covered by the patent.

16 Now, after the applicant files the application
17 with the PTO, an examiner reviews the application to
18 determine whether or not the claims are patentable, that is
19 to say appropriate for patent protection, and whether or
20 not the specification adequately describes the invention
21 that is claimed.

22 In examining a patent application, the examiner
23 reviews certain information about the state of the
24 technology at the time the application was filed.

25 The PTO searches for and reviews this type of

1 information that is publicly available or is submitted to
2 the PTO by the applicant.

3 This type of information is called prior art. The
4 examiner reviews this prior art to determine whether or not
5 the invention is truly an advance over the state of the art
6 at the time.

7 Prior art is defined by law, and at a later time,
8 I'll give you specific instructions as to what constitutes
9 prior art.

10 But in general, prior art includes information
11 that demonstrates the state of the technology that existed
12 before the claimed invention was made or before the
13 application for a patent was filed.

14 A patent contains a list of certain prior art that
15 the examiner has examined. The items in this list are
16 called the cited references.

17 After the prior art search and examination of the
18 application, the examiner at the PTO informs the applicant
19 in writing of what the examiner has found and whether the
20 examiner considers any claim to be patentable. And if so,
21 it would be allowed. This writing from the examiner is
22 called an Office Action.

23 Now, if the examiner rejects the claims, the
24 applicant has an opportunity to respond to the examiner, to
25 try to persuade the examiner to allow the claims. The

1 applicant also has a chance to change or amend the claims
2 or to submit new claims.

3 Now, the papers generated during these
4 communications back and forth between the examiner and the
5 applicant are called the prosecution history.

6 And this process may go back and forth between the
7 examiner and the applicant for some time until the examiner
8 is ultimately satisfied that the application meets the
9 requirements for a patent. And in that case, the
10 application issues as a United States patent. Or in the
11 alternative, if the app -- if the examiner, rather,
12 ultimately concludes that the application should be
13 rejected, and in that case no patent is issued.

14 Sometimes patents are issued after appeals within
15 the PTO or to a Court.

16 Now, the fact that the Patent and Trademark Office
17 grants a patent does not necessarily mean that any
18 invention claimed in the patent, in fact, deserves the
19 protection of a patent.

20 While an issued United States patent is presumed
21 valid under the law, a person accused of infringement has
22 the right to argue here in federal court that a claimed
23 invention in a patent is invalid.

24 It's your job as the jury to consider the evidence
25 presented by the parties and determine independently and

1 for yourselves whether or not the Defendants have proven
2 that a patent at issue is invalid.

3 Now, to help you follow the evidence, I'm going to
4 give you a brief summary of the positions of the two
5 parties.

6 As you all know, the party that brings the lawsuit
7 is called the Plaintiff.

8 Here the Plaintiff in this case is Intellectual
9 Ventures I LLC, who I'll refer to and you'll hear referred
10 to throughout the case as either the Plaintiff,
11 Intellectual Ventures, or sometimes you'll hear it just
12 called IV.

13 Now, the party against a lawsuit -- against whom a
14 lawsuit is brought, as you all know, is called the
15 Defendant.

16 The Defendants, and there are more than one in
17 this case, are T-Mobile USA, Inc. and T-Mobile US, Inc.,
18 who will be referred to jointly throughout the trial as
19 called T-Mobile. You may hear them called T-MO.

20 And the other Defendants are Ericsson, Inc., and
21 its Swedish parent company, Ericsson in Sweden, who you'll
22 hear referred to collectively or jointly together as
23 Ericsson.

24 And when I refer to T-Mobile and Ericsson
25 together, I'll simply call them the Defendants, which will

1 cover all the Defendants.

2 Now, as I told you during jury selection, this is
3 a case of alleged patent infringement. There are three
4 separate United States patents that have been asserted in
5 this case.

6 The first is United States Patent No. 6,628,629.

7 Now, ladies and gentlemen, patents are commonly
8 referred to by the last three digits of their number.

9 So in this case, Patent 6,628,629 will simply be
10 referred to as the '629 patent. You may hear it called the
11 '629 patent.

12 The second United States patent at issue in this
13 case is United States Patent 7,412,517, which you will
14 hear -- here referred to -- you will hear it referred to as
15 the '517 patent.

16 And then the third and final United States patent
17 at issue in this case is United States Patent
18 No. RE46,206, which you'll hear referred to simply as the
19 '206 patent.

20 These three patents may be referred to
21 collectively at various times in the case as the
22 patents-in-suit or as the asserted patents. And those
23 terms will refer to all three of the patents at issue.

24 These patents generally relate to the managing and
25 conserving of resources on mobile devices.

1 Now, the Plaintiff in this case, Intellectual
2 Ventures, contends that the Defendants in this case,
3 T-Mobile and Ericsson, are willfully infringing certain
4 claims of the patents-in-suit by importing, making, or
5 selling products that include their patented technology.

6 Intellectual Ventures also contends that it's
7 entitled to money damages as a result of this infringement.

8 Now, the Defendants, T-Mobile and Ericsson, deny
9 that they infringe any of the Plaintiff's patents in this
10 suit, and they contend that the asserted claims of the
11 patents-in-suit are invalid as being either anticipated or
12 obvious in light of the prior art.

13 Now, ladies and gentlemen, I know there are many
14 new words and concepts that have been thrown at you today,
15 and I'm going to define a lot of those words and concepts
16 for you as we go through these instructions.

17 The attorneys in this case are going to discuss
18 them in their opening statements, and the witnesses are
19 going to help you go -- by going through their testimony to
20 understand these words and concepts.

21 So, please, do not feel overwhelmed at this point.
22 I promise you, it will all come together as we go through
23 the trial.

24 Now, one of your jobs in this case is to decide
25 whether or not the asserted claims of the patents-in-suit

1 have been infringed and whether they are invalid.

2 If you decide that any claim of the
3 patents-in-suit has been infringed by the Defendants and is
4 not invalid, then you'll need to decide whether or not that
5 infringement by the Defendants has been willful.

6 And you will also need to decide at that point the
7 amount of money damages that should be awarded to the
8 Plaintiff as compensation for that infringement.

9 Now, as I mentioned, my job as the Judge is to
10 tell you what the law is, to handle rulings on evidence and
11 procedure, and to oversee the conduct of the trial and
12 maintain the decorum of the court.

13 In determining the law, it is specifically my job
14 to determine the meaning of any claim language from within
15 the asserted patents that needs to be interpreted.

16 And I've already determined the meanings of
17 certain language from the claims of the patents-in-suit.

18 And you must accept those meanings that I give
19 you, and you must use those meanings and apply them when
20 you decide whether any patent claim has or has not been
21 infringed and whether or not any claim is or is not
22 invalid.

23 You'll be given in a doc -- you'll be given a
24 document in a few minutes which will identify those
25 meanings that I am giving you.

1 Now, for any claim for which I have not provided
2 you with a definition or a construction, you should apply
3 the plain and ordinary meaning.

4 But if I have supplied you with a definition or a
5 construction relating to language from any of the claims of
6 the patents-in-suit, you are to apply my definitions and my
7 constructions to those terms throughout the case.

8 However, my interpretation of the language from
9 within the claims should not be taken by you as an
10 indication that I have a personal opinion regarding any of
11 the issues in this case, such as infringement and
12 invalidity, because those issues, ladies and gentlemen, are
13 yours to decide alone.

14 I'll give you more detailed instructions on the
15 meaning of the claims before you retire and deliberate on
16 your verdict.

17 In deciding the issues that are before you, you'll
18 be asked to consider specific legal rules, and I'll give
19 you an overview of those rules now. And then at the
20 conclusion of the case, I'll give you much more detailed
21 instructions.

22 The first issue that you're asked to decide is
23 whether the Defendants have infringed any of the asserted
24 claims of the patents-in-suit.

25 Infringement is assessed on a claim-by-claim

1 basis, and Intellectual Ventures, the Plaintiff, must show
2 by a preponderance of the evidence that a claim has been
3 infringed.

4 Therefore, there may be infringement as to one
5 claim but no infringement as to another claim.

6 Also, there are a few different ways that a patent
7 can be infringed, and I'll explain the requirements for
8 each of these types of infringement in detail at the
9 conclusion of the case.

10 But, in general, a Defendant may infringe the
11 asserted patents by making, using, selling, or offering for
12 sale in the United States or importing into the United
13 States a product meeting all the requirements of a claim
14 from the asserted patents.

15 And I'll provide you with more detailed
16 instructions regarding infringement at the conclusion of
17 the case.

18 Now, the second issue that you're going to be
19 asked to decide is whether any of the asserted patents are
20 invalid. Invalidity is a defense to infringement.

21 Therefore, even though the United States Patent
22 and Trademark Office has allowed the asserted claims and
23 even though a patent issued by that office is presumed to
24 be valid, you, the jury, must decide whether those claims
25 are invalid after hearing the evidence presented during

1 this case.

2 You may find that a patent claim is invalid for a
3 number of reasons, including because it claims subject
4 matter that is not new or it is obvious.

5 For a patent claim to be invalid because it is not
6 new, the Defendants must show by clear and convincing
7 evidence that all the elements of the claim are
8 sufficiently described in a single previous printed
9 publication or patent, and we call these items prior art.

10 If a claim is not new, ladies and gentlemen, it is
11 said to be anticipated by the prior art.

12 Another way that a claim can be found to be
13 invalid is that it may have been obvious.

14 Even though a claim is not anticipated because
15 every element of the claim is not shown or sufficiently
16 described in a single piece of prior art, the claim may
17 still be invalid if it would have been obvious to a person
18 of ordinary skill in the field of technology of the patent
19 at the relevant time.

20 Now, you're going to need to consider a number of
21 questions in deciding whether the claim -- the invention
22 claimed in the asserted patents is obvious. And I'll
23 provide you with more detailed instructions on these
24 questions at the conclusion of the trial.

25 If, however, you decide any claim of the

1 patents-in-suit has been infringed and is not invalid, then
2 you'll need to decide whether the infringement by the
3 Defendants has been willful, and you will also need to
4 decide what amount of money damages should be awarded to
5 the Plaintiff to compensate it for that infringement.

6 A damages award, ladies and gentlemen, must be
7 adequate to compensate the patentholder for the
8 infringement, and in no event may a damage award be less
9 than what the patentholder would have received had it been
10 paid a reasonable royalty for the use of its patent.

11 However, any damages that you award are meant to
12 compensate the patentholder, and they are not meant to
13 punish the Defendants.

14 You may not include in any damages award an
15 additional amount as a fine or a penalty above what is
16 necessary to fully compensate the patentholder for the
17 infringement.

18 Additionally, damages cannot be speculative, and
19 the Plaintiff must prove the amount of its damages for the
20 alleged infringement by a preponderance of the evidence.

21 I'll give you more detailed instructions on the
22 calculation of damages at the conclusion of the trial,
23 including giving you specific instructions with regard to
24 the calculation of a reasonable royalty.

25 However, the fact that I'm instructing you on

1 damages now does not mean that the Plaintiff is or is not
2 entitled to recover damages.

3 Now, ladies and gentlemen, you're going to be
4 hearing from a number of witnesses in this case, and I want
5 you to keep an open mind while you're listening to the
6 evidence and not decide any of the facts until you've heard
7 all the evidence.

8 Also, this is important: While the witnesses are
9 testifying, remember, ladies and gentlemen, that you, the
10 jury, will have to decide the degree of credibility and
11 believability to allocate to all the witnesses and to all
12 the evidence in this case.

13 So while the witnesses are testifying, you should
14 be asking yourselves things like this: Does the witness
15 impress you as being truthful? Does he or she have a
16 reason not to tell the truth?

17 Does he or she have any personal interest in the
18 outcome of the case? Does the witness seem to have a good
19 memory? Did he or she have an opportunity and ability to
20 observe accurately the things that they've testified about?

21 Did the witness appear to understand the questions
22 clearly and answer them directly? And, of course, does the
23 witness's testimony differ from the testimony of other
24 witnesses, and if it does, how does it differ?

25 These are some of the things that you should be

1 thinking about while you're listening to each and every
2 witness over the course of the trial.

3 Also, ladies and gentlemen, I want to talk to you
4 briefly about expert witnesses.

5 When knowledge of a technical subject may be
6 helpful to you, the jury, a person who has special training
7 and experience in that particular field -- we call them an
8 expert witness -- is permitted to testify to you about his
9 or her opinions on those technical matters.

10 However, you're not required to accept an expert
11 or any other witness's opinions at all. It's up to you to
12 decide if you believe that an expert witness or any witness
13 for that matter is correct or incorrect and whether or not
14 you want to believe what they say.

15 Now, I anticipate that there will be expert
16 witnesses testifying in support of each side in this case,
17 and it will be up to you to listen to their qualifications
18 when they're called to testify, and when they give an
19 opinion and explain their basis for it, you'll have to
20 evaluate what they say, whether you believe it, and if you
21 do, to what degree, and do you want to give it weight of
22 any matter -- any manner.

23 Remember, ladies and gentlemen, judging and
24 evaluating the credibility and believability of each and
25 every witness is an important part of your job as jurors.

1 Now, during the trial, it's possible that there
2 will be testimony from one or more witnesses that are going
3 to be presented to you through what's called a deposition.

4 In trials such as this, it's very difficult, if
5 not impossible, to have every witness appear live in the
6 courtroom when they're called to testify. So the lawyers
7 for each side, prior to the trial, take the depositions of
8 the witnesses.

9 In a deposition, a court reporter is present, the
10 witness is present and is sworn and placed under oath, just
11 as if he or she were personally in court.

12 Then the parties, through their lawyers, ask the
13 witness questions, and the witness's answers to those
14 questions, along with the questions themselves, are
15 recorded and taken down.

16 Most of those depositions are commonly done with a
17 video recording made as well. Portions of those
18 depositions and the video recordings of them reflecting the
19 questions that were asked and the answers that were given
20 can be played back to you as a part of this trial so that
21 you can see those witnesses and hear their testimony, even
22 though they're not physically present in the courtroom.

23 That deposition testimony is entitled to the same
24 consideration, insofar as possible, and is to be judged as
25 to its credibility, weight, and otherwise considered by

1 you, the jury, in the same way as if the witness had been
2 present in the courtroom and testified live from the
3 witness stand.

4 Now, during the course of the trial, it's possible
5 the lawyers are going to make objections, and when they do,
6 I'll issue rulings on those objections.

7 It's the duty of an attorney for each side in the
8 case to object when the other side offers evidence that the
9 attorney believes is not proper under the rules of the
10 Court and the rules of civil procedure.

11 Upon allowing the testimony or other evidence to
12 be introduced over the objection of an attorney, the Court
13 does not, unless otherwise expressly stated, indicate an
14 opinion about the weight or effect of such evidence.

15 As I've said before, you, the jury, are the sole
16 judges of the credibility and believability of all the
17 witnesses and the weight and effect to give to all of the
18 evidence.

19 Now, ladies and gentlemen, I want to compliment
20 both the Plaintiff and Defendant in this case -- the
21 Defendants in this case, because up until today, outside of
22 your presence, along with the Court, they've all worked
23 very diligently with the Court to review and consider a
24 great many exhibits that would be presented during this
25 trial.

1 And through those pretrial procedures with the
2 Court, they have presented the proposed exhibits, any
3 objections to them, and the Court's heard their arguments
4 regarding admissibility, and I've already issued rulings on
5 those disputes so that we already know which exhibits are
6 going to be admitted in this trial.

7 And that has saved you. You may not realize this,
8 but that has saved you a lot of time. It's also saved you
9 from sitting there and listening over and over and over
10 again to very similar objections to exhibits.

11 All that's already been handled by the Court and
12 the parties through their counsel.

13 And that means, when they show you an exhibit,
14 either Plaintiff or Defendants, during the course of the
15 trial, it's already been admitted.

16 They can ask what questions that they think are
17 appropriate to put it in context, but they don't have to go
18 through the formal offer, objection, argument, and ruling
19 process that the Court's already considered at length in
20 advance of the trial.

21 So I want you to know, both sides have worked hard
22 to streamline those issues with the Court, and even though
23 you may not realize it, it has saved you a lot of time as
24 you serve as jurors in this case.

25 But it's still possible that over the course of

1 the trial, objections will be made.

2 If I should sustain an objection to a question
3 addressed to a witness, then you must disregard that
4 question entirely, and you may draw no inference from its
5 wording or speculate about what the witness would have said
6 if I had allowed them to answer the question.

7 If, on the other hand, I overrule an objection to
8 a question addressed to a witness, then you should consider
9 the question and the answer just as if no objection had
10 been made.

11 You should also know, ladies and gentlemen, that
12 the law in the United States permits a United States
13 District Judge such as myself to comment to the jury
14 regarding the evidence in a case, but those comments are
15 only an expression of the judge's opinions, and they may be
16 disregarded by the jury.

17 Even though I might be permitted under the law to
18 make those kinds of comments to you, as I said earlier, I'm
19 going to work very hard not to comment on any of the
20 evidence and not to do anything that you should consider or
21 take into account in deciding the ultimate facts in this
22 case.

23 Also, ladies and gentlemen, as I mentioned earlier
24 during jury selection, the court reporter is in front of
25 me.

1 She will take down everything that's said in the
2 courtroom, if I can keep people from talking at the same
3 time anyway, but the transcription of what she takes down
4 everything that's said during the course of the trial is
5 not going to be available to you to consider or review
6 during your deliberations in this case.

7 The transcript is prepared in the event there's an
8 appeal to an appellate -- to an appellate court that will
9 review this trial. That means you're going to have to rely
10 on your own individual memories of the evidence that's
11 presented over the course of the trial.

12 Now, in a moment, each of you are going to be
13 given a juror notebook, and in the back of that notebook,
14 you're going to find a brand new legal pad that you can
15 use, with blank pages, to take notes throughout the trial,
16 if you desire to.

17 It's up to each of you to decide whether or not
18 you want to take notes during the course of the trial, and
19 if you do, how detailed you want those nettle to be.

20 But, remember, if you decide to take notes, those
21 notes are for your own personal use alone. You're going to
22 have to rely on your memory of the evidence, which is why
23 you should pay close attention to the testimony of each and
24 every witness.

25 You should not abandon your own recollection of

1 the evidence because some other juror's notes indicate
2 something different. Your notes are to refresh your
3 recollection, and that's the only reason you should be
4 keeping them.

5 All right. At this time, I'm going to ask our
6 Court Security Officer to hand out to each member of the
7 jury the jury notebooks.

8 (Pause.)

9 THE COURT: All right. Ladies and gentlemen, if
10 you'll look inside those notebooks, you'll see that you
11 each have a complete copy of the three patents at issue in
12 this case.

13 You'll also find that there's a section with
14 individual tabbed pages for each potential witness in the
15 case.

16 And on each of those witness pages, there should
17 be a head-and-shoulders photograph of the witness at the
18 top of the page with their name underneath.

19 The Court's often found that it's beneficial to
20 the jury, when you try to remember the witness over a
21 lengthy -- try to remember the evidence over a lengthy
22 trial, that you can look back and see a picture of who it
23 was that testified about those things during the course of
24 the trial.

25 The remainder of those witness pages are just

1 simply ruled lines that you can use for note-taking, as
2 well as any note-taking that you want to take on the legal
3 pad that you'll find in the back of those notebooks.

4 You'll also find in there a table or a list of the
5 terms from the claim language of the patents-in-suit that
6 the Court has already construed and defined for you.

7 Those are the constructions or definitions
8 relating to that language that you must apply throughout
9 the case and your service in the case.

10 Now, these notebooks should either be in your
11 possession, or they should be closed on the table in the
12 jury room.

13 There may be times during the trial, probably
14 there will be, when we are going to take a short recess,
15 and rather than me have you take them back to the jury room
16 with you, I'll just say, ladies and gentlemen, you may
17 leave your notebooks closed and in your chairs, in which
18 case you can just do that and leave them there over that
19 short recess.

20 But if you're going to be out of the courtroom for
21 any length of time, whether it's overnight or through the
22 lunch break, I'll have you take those notebooks with you.
23 They should be in your possession and control at all times.

24 And when you leave each day, you should leave them
25 closed on the table in the jury room so that you can pick

1 them up the next morning.

2 Now, in a moment, we're going to hear opening
3 statements from the lawyers, and those opening statements
4 are designed to give you a roadmap about what each side
5 expects to offer by way of the evidence in the case.

6 And you should remember throughout the trial, that
7 what the lawyers tell you is not evidence.

8 The evidence is the sworn testimony that you're
9 going to hear, whether presented by a live witness or by a
10 deposition witness, and the exhibits that the Court has
11 already examined and found applicable and admitted in the
12 case. That, ladies and gentlemen, is the sole source of
13 the evidence in this case.

14 Now, what the lawyers -- lawyers tell you is what
15 their impression is of the evidence that they hope will be
16 presented over the course of the trial. And they have a
17 duty to point out to you what they believe the evidence is.
18 But, remember, what they tell you is not evidence.

19 Now, after the lawyers give their opening
20 statements, the Plaintiff will have an opportunity to call
21 its witnesses and put on its evidence.

22 After the Plaintiff has presented all of its
23 witnesses, then the Plaintiff will rest its case-in-chief.

24 And at that point, the Defendants will have an
25 opportunity to call their witnesses and to present their

1 evidence.

2 And when the Defendants have presented all of
3 their witnesses and their evidence, the Defendants will
4 rest their case-in-chief.

5 At that point, the Plaintiff will have an
6 opportunity to call any rebuttal witnesses that it wishes
7 to -- to rebut what may have been presented by the
8 Defendants during the trial.

9 When the Plaintiff's rebuttal case is finished,
10 then you will have heard all the evidence in this case.

11 And at that time, I'll give you written
12 instructions on the law, and also, ladies and gentlemen,
13 when I come to that point and give you my written -- give
14 you my instructions on the law, my final instructions to
15 the jury, I'm going to reduce those to writing, and I'm
16 going to have a separate copy of those printed for each one
17 of you so that you'll be able to take that copy of those
18 instructions back to the jury room with you.

19 And that way, when I give them to you orally,
20 you'll be free simply to listen rather than to worry about
21 taking notes on those instructions.

22 But I'll give you my final instructions at that
23 time. After I've given my final instruction to the jury on
24 the law, then the attorneys for each side will present
25 their closing arguments.

1 After the closing arguments have been presented by
2 the attorneys for each side, then I will instruct you to
3 retire to the jury room and to deliberate on the verdict
4 that I will also send back with you.

5 As I've said, you are not to discuss the case
6 among yourselves, and you are not to discuss the case with
7 anyone or communicate about it in any way.

8 But at the point when you've heard all the
9 evidence, I've given you my final instructions on the law,
10 counsel have given you and presented their closing
11 arguments, and I have directed that you should retire and
12 deliberate on the verdict, then at that point it becomes
13 your duty to talk among the eight of you about the case and
14 the evidence and try as best you can to come to unanimous
15 answers to the questions that will be set forth in the
16 verdict form.

17 I also want to remind you again that over the
18 course of this week's trial, when you pass one or more of
19 the lawyers or the witnesses or anybody associated with
20 either side, they're not going to visit, they're not going
21 to talk, they're not going to enter into conversation with
22 you. Don't think that's rude or unfriendly. Just
23 remember, it's what the Court requires of them, and that's
24 why they're doing that.

25 All right. With those instructions, we're now

1 going to hear opening statements from the counsel for both
2 sides.

3 The Plaintiff may now present its opening
4 statement on behalf of Intellectual Ventures.

5 Would you like a warning on your time, Mr. Ward?

6 MR. WARD: I would, Your Honor, three minutes.

7 THE COURT: All right. You may proceed with your
8 opening statement.

9 MR. WARD: May it please the Court.

10 THE COURT: Proceed.

11 MR. WARD: Counsel.

12 The un-carrier. That's T-Mobile's trademark
13 slogan. They're the un-carrier because they're unlike the
14 other carriers, unlike AT&T and Verizon. And it's a slogan
15 that has served them well. They've got a good business.
16 They've got good employees. They've got a good network.
17 And like Ericsson, they've got good products.

18 They've even got some strong patents. But they're
19 not the only company with strong patents and good ideas.
20 They don't have the market cornered on that.

21 The evidence in this case is going to show you
22 that they are unwilling to respect the patents of IV.

23 They're unwilling to pay for the use of that
24 property. And you're going to learn that this is not just
25 something that's happened in this case. You're going to

1 learn that this is -- goes all the way to the top of
2 T-Mobile.

3 This is a presentation. It's a document that
4 you'll see during the course of this trial, and it relates
5 something to the release of VoLTE, and that's Voice over
6 LTE, in the Dallas area. And it was called Un-wrap Dallas.

7 You'll see -- they refer to themselves with
8 un-carrier throughout, and you'll see this play on words
9 "un" throughout the course of the case.

10 Page 8 of that presentation, they stated:
11 Un-carrier is our response to a stupid, broken, and
12 arrogant industry.

13 We're tearing down the rules of wireless,
14 challenging the norm, the status quo. And we'll present
15 evidence that this wasn't just the words of some low-level
16 employee. The CEO of T-Mobile, a gentleman named John
17 Ledger, is the one who refers to AT&T and Verizon as the
18 stupid, broken, and arrogant industry.

19 In fact, you'll learn he refers to AT&T and
20 Verizon as the dumb and dumber of the industry.

21 Fortunately for IV, we have laws that dictate what
22 happens when someone trespasses on intellectual property --
23 when someone trespasses, infringes on patents, and that's
24 why we're here before you.

25 Because we're going to prove to you during the

1 course of this case that T-Mobile and Ericsson are
2 trespassing.

3 They're infringing on our patents. They're going
4 to deny that. They're going to say we don't infringe. We
5 don't trespass.

6 And you might have already picked up on this
7 because they've got another defense. It's their burden of
8 proof, but they're going to change horses and say, well,
9 maybe we do infringe, but your patents are all invalid,
10 they're no good.

11 And they've got a couple of reasons why they say
12 that's the -- the case. And that's their burden, and we'll
13 let them try and prove that.

14 But then they're going to change horses again, and
15 they're going to say maybe we do trespass, maybe we do --
16 maybe your patents are valid, and in that case, we owe you
17 \$158,000.00, not the 77 million that we say that they owe.

18 In the next 30 minutes, I'm going to tell you more
19 about the inventor in this case, IV, a little about the
20 technology, and how we're going to prove that the
21 Defendants are infringing on that technology.

22 Let me introduce you to Dr. Jacob Jorgensen. He's
23 the inventor. Dr. Jorgenson, are you in the courtroom?

24 Dr. Jorgenson will be our first witness in this
25 case. He's the inventor on these patents. But he didn't

1 start out in the field of telecommunications.

2 You'll learn that he has a degree in physics from
3 MIT, that he went to medical school, graduated from medical
4 school, and went into his residency and fellowship in
5 surgery.

6 And it was while he was performing surgeries that
7 he became interested in the field of telecommunications.
8 And after he worked as a doctor at night, he would go to
9 the library. And he started studying about
10 telecommunications while he was in his fellowship.

11 And he became so interested in this field, that he
12 left the practice of medicine and devoted his life to the
13 field of telecommunications.

14 He was involved in several start-up businesses,
15 ultimately founding a company called Malibu Networks. He
16 was a co-founder, and he had -- he was the chief technology
17 officer. And it was while he was at Malibu Networks that
18 he came up with these inventions and applied for and was
19 issued patents.

20 We'll spend more time in a minute talking about
21 these inventions, but as I told you during voir dire, it --
22 the inventions deal with intelligent base stations that
23 provide high quality of service in wireless networks.

24 And we'll talk more about that, and I hope to give
25 you a better understanding of exactly what these inventions

1 dealt with.

2 Let me tell you about Intellectual Ventures.
3 Intellectual Ventures, during this case, will be
4 represented by Mr. John Paschke. Mr. Paschke is a
5 licensing executive.

6 Thank you, Mr. Paschke.

7 He's a licensing executive at Intellectual
8 Ventures. He will testify. He'll be our second witness,
9 and he'll tell you about their business and how they came
10 to acquire the patents that we're going to talk about.

11 He'll also tell you about Intellectual Ventures.
12 It was founded by a gentleman named Nathan Myhrvold.

13 Mr. Myhrvold would -- was the first technology
14 officer at Microsoft, has over 800 patents to his own name.

15 He is a prolific inventor. And you'll learn about
16 the business that Mr. Myhrvold started. You'll learn about
17 the different areas of business that Intellectual Ventures
18 is in, and you're going to learn about this area of
19 business, which is the acquisition of patents.

20 You'll hear that IV sometimes buys patents, like
21 they did in this case, and they identify potential
22 trespassers.

23 There's a number of companies that have invested
24 in Intellectual Ventures, some early investors, companies
25 you're going to know, Apple, Microsoft, Nokia, Sony, Cisco,

1 and Verizon.

2 We heard during voir dire about the McDonald's
3 lawsuits and some lawsuit about missing trousers. This is
4 not that case.

5 These companies have invested a lot of money in
6 intelligent -- Intellectual Ventures.

7 In fact, you're going to learn that Verizon took a
8 license to the portfolio of patents, including -- including
9 these three patents, and they paid over a hundred million
10 dollars for those rights.

11 In addition to that, they committed to -- this is
12 Verizon -- to investing another \$250 million in
13 Intellectual Ventures. And they've invested a large chunk
14 of that, as well, acquiring rights to other patents that
15 Intellectual Ventures has.

16 There's another licensee to the portfolio of
17 patents that IV has, including these three patents, a
18 company called AT&T.

19 And I can't say the amount in open court that AT&T
20 paid, but you'll hear it from Mr. Paschke. We'll seal the
21 courtroom, and I can promise you, it's not \$158,000.00.

22 To understand this technology, we've got to go
23 back to the late 1990s, because that's when Dr. Jorgenson
24 came up with these inventions.

25 We've got to remember what the technology was

1 like. There were land lines. There were cell phones, as
2 well. But I'm going to explain voice and data using land
3 lines.

4 You remember when you had an Internet connection,
5 if you plugged into the -- the Internet with your land
6 line, you couldn't talk on the phone, right, unless you had
7 a separate line. You got that nasty noise if you picked
8 up.

9 Similarly, if you were on the Internet, you
10 couldn't make phone calls. Sometimes you had -- people had
11 two lines, but voice was on one line, and data was on
12 another.

13 And that's what I'm representing here with these
14 two pipes. Think about wireless transmissions as pipes.

15 They're in the air, but voice is being transmitted
16 in one pipe and data is being transmitted in another.

17 And you'll learn that in that voice pipe there are
18 packets. And think of packets as containers of
19 information. And those packets, delay is not really
20 acceptable.

21 There can be some errors, but they pretty much got
22 to be sent at the same interval. Otherwise, the person on
23 the other end of the line won't understand if those data
24 packets aren't transmitted that way.

25 Now, data packets are a little bit different.

1 They're much larger. Think of data as the information
2 that's put together if you're looking at a web page -- and
3 that's what's shown here is a web page of the Dallas
4 Morning News.

5 There can be some delay, but errors aren't
6 acceptable. If there's errors, then you're going to get a
7 messed up picture, and it's not going to look right when
8 the web page gets displayed.

9 What Dr. Jorgenson foresaw was com -- combining
10 the voice and data into one pipe and doing it wirelessly
11 and transmitting it. But he foresaw problems when you do
12 that. And that -- the problems that he foresaw is what
13 ultimately led to the patents in this case.

14 The problems would be that if you've got voice and
15 data in there, you've got to have a way to recognize which
16 packet is which because if you don't, you're going to be
17 dropping data, or you might be dropping calls. And what he
18 came up with was a way to do -- to do this all in one pipe.

19 And that led to the issuance of these patents, the
20 '629, the '206, and the '517 patents.

21 Now, remember, this was 10 years at least before
22 LTE came out, and he didn't invent LTE. He didn't invent
23 Voice over LTE.

24 But when LTE went to Voice over LTE, these
25 Defendants used his invention because it doesn't work

1 without it. Doesn't work nearly as efficiently as T-Mobile
2 needed -- needed it to.

3 And you're going to learn they desperately needed
4 this invention. And I'm going to show you the documents to
5 back that up in a minute.

6 But he didn't just stop with filing patents. He
7 had a company that employed over a hundred scientists.

8 Malibu Networks at its peak employed over a
9 hundred scientists, had up to 150 employees, and they
10 developed prototypes. And he showed these prototypes, and
11 people saw the prototypes and said that can't be. You
12 can't be transmitting wirelessly. They looked for the
13 wires. And there were no wires. And he'll tell you that
14 story.

15 So you've got to think how did a -- a surgeon
16 figure this out when you've got all these
17 telecommunications companies?

18 He'll tell you that story. He was an outsider,
19 because the industry wanted to solve this problem, and they
20 looked at it, and they said let's use ATM, not ATMs like we
21 think, not automated teller machines, but a different type
22 of network.

23 And Dr. Jorgenson said that's not ever going to
24 work. He was an outsider. He came at it from a different
25 perspective, and ultimately was issued the patents that

1 we're going to talk to you about in this case.

2 So if this was such a great invention, how did it
3 end up in the hands of IV? Because you're going to learn
4 that Dr. Jorgensen's company, Malibu Networks, didn't make
5 it. It failed. It went into bankruptcy.

6 This was right around 2001, 2002 when the dot com
7 burst happened, and they weren't able to secure
8 investments.

9 And Intellectual Ventures bought these patents for
10 \$900,000.00 -- actually not these patents, one of the
11 patents. Two of the patents were applications. They
12 didn't exist. And that was in 2004, at least six years
13 before LTE networks were released, nine years before
14 T-Mobile had even gone to VoLTE, Voice over LTE.

15 And so I have a feeling the Defendants will try to
16 argue to you and present evidence that, well, these things
17 weren't really valuable if the company went bankrupt,
18 right?

19 But think about how far ahead of time his
20 inventions were, years before, in the late '90s. Two of
21 the patents hadn't even issued.

22 And they say, well, maybe he's got something, but
23 it can't be that valuable, right? They paid \$900,000.00,
24 and they want \$77 million.

25 I want you to think about the licenses that we'll

1 present to you, the evidence of the licenses to AT&T and
2 Verizon.

3 And think about their argument when we're
4 presenting evidence. They want to say, well, you didn't
5 pay that much for them. And it's like if I were to go out
6 and buy oil and gas interests in an area where oil had not
7 been discovered -- say I spent \$10,000.00 on those mineral
8 interests. 10 years go by. Oil starts being discovered
9 around my property.

10 And a company comes -- I used Exxon in my voir
11 dire. I'll stick with picking on Exxon. Exxon drills a
12 well, and they hit a gusher. They find a lot of oil.
13 Millions of dollars. You think they could tell me, well,
14 you only spent \$10,000.00 on those interests, we'll just
15 give you a multiple of that. No, I'd want to get paid for
16 how much they used my property, what they took. And that's
17 what we'll ask you to focus on. How much have the
18 Defendants used Dr. Jorgensen's inventions?

19 So let's talk a little bit about the technology.
20 We heard a little about 1G, 2G, 3G, and 4G networks, and
21 I've told you a little about VoLTE. And I think Ms. Smith
22 might have misspoke in her voir dire, because she said
23 Ericsson invented 1G, 2G, 3G, and 4G.

24 I don't think they'll say that during the course
25 of this trial because Ericsson certainly did not invent 2G,

1 3G, 4G, or Voice over LTE.

2 They might have contributed to some of that
3 technology, but you're going to have to watch them because
4 they will claim Dr. Jorgensen's inventions during the
5 course of this trial. I think she misspoke when she said
6 they invented these things.

7 Dr. Jorgensen patented his ideas, though, in the
8 late '90s. That's when he filed these patent applications.
9 And you see VoLTE coming much later.

10 So let's talk about what we accuse. Why do we
11 accuse the Defendants of infringing on these patents?
12 We're going to focus on LTE networks and the first
13 evolution of LTE.

14 There were two pipes -- remember I talked about
15 there was voice and data. There were two pipes in LTE.
16 And I didn't know this before we started this case. I
17 thought everything was happening over LTE.

18 But in the first launch of that technology, you'll
19 learn that voice was transmitted on 3G, and data was
20 actually transmitted on LTE.

21 Something else you'll learn are these pipes are
22 called spectrum, and spectrum is incredibly expensive,
23 billions of dollars, billions and billions and billions of
24 dollars to get spectrum. It's very precious, and it's a
25 limited resource, and companies are always looking for more

1 of it.

2 And that's what happened when they went Voice over
3 LTE. They were able to move that voice and data into one
4 pipe, and that freed up spectrum.

5 And this is what we say the Defendants have done
6 that infringe on this property. The '517 and '206 patents
7 accuse a feature called QoS Aware Scheduling, and it was
8 present in the first evolution of LTE and in LTE with
9 voice, this VoLTE.

10 Then when they put everything in one pipe, they
11 started infringing the '629 patent with DBS-SABE.

12 That's the feature that they call in their own
13 products -- it's called DBS-SABE. And it was a
14 combination. When they went Voice over LTE, they were
15 infringing the '517, the '207 [sic], and the '629.

16 I know I've thrown a lot of terms at you, and I
17 don't mean to confuse you. I'm trying to keep it as high
18 level as I can. The good news is, we'll have Dr. Tim
19 Williams --

20 Dr. Williams, are you here in the courtroom?

21 DR. WILLIAMS: Yes.

22 MR. WARD: Dr. Williams will come and testify --
23 thank you, sir.

24 Dr. Williams has a bachelor's degree in electrical
25 engineering. He has his master's and his Ph.D. from the

1 University of Texas in electrical engineering, and he is
2 going to come, and he's going to walk you through the
3 claims of each one of these patents.

4 And he'll compare the claims of the patent to the
5 features that we say infringe, and he will match up
6 element-by-element. It will take a long time. It's --
7 it's a very technical analysis, but he'll do it for you.
8 And he's going to teach you about T-Mobile's networks.

9 This is a cell tower in the middle of the screen
10 there, and at the bottom of it, you see something called an
11 eNodeB. An eNodeB is that box you see on cell towers.

12 It's called a base station. And that cell tower
13 transmit out to -- transmits out to phones, and in this
14 case, you'll hear them refer to UEs, user equipment, or
15 CPE, customer premises equipment.

16 I haven't talked much about Ericsson. Ericsson is
17 actually the company that manufactures these base stations,
18 these eNodeBs.

19 We've also accused them of infringement, but we
20 accuse them of indirect infringement. It's a little
21 different than the direct infringement that T-Mobile is
22 doing, and Dr. Williams will talk to you about that.

23 Now, I've told you about this limited resource
24 called spectrum. We've talked a little bit about
25 competition in the industry and how each carrier has its

1 own allotment.

2 We're going to present evidence to you from
3 various sources, different documents from within T-Mobile,
4 from within Ericsson, and from industry publications, and I
5 want to show you one of those.

6 It's called IBISWorld. And this is Plaintiff's
7 Exhibit 184. And this is something that the industry
8 receives and reviews, and let's look at what the industry
9 was saying back in 2017.

10 Wireless providers have struggled to keep up with
11 demand, devoting a significant amount of resources to
12 expand network capacity.

13 The battle for wireless spectrum has been a large
14 source of competition, and the struggle for new subscribers
15 in this saturated market has been challenging.

16 Carriers' appetite for both more spectrum and
17 subscribers has played out in a series of competitive
18 auctions and merger and acquisition attempts.

19 So I've told you about spectrum. I've told you
20 about competition. You might say, where are the documents
21 from T-Mobile that say this is a problem? We'll bring you
22 Plaintiff's Exhibit 1387.

23 You see there, they're calling themselves the
24 un-carrier network capacity strategy, and this is from June
25 of 2014. This is what they're telling themselves

1 internally.

2 Un-carrier success has increased network demand to
3 the point where it will exceed current capacity starting in
4 2015. Planned spectrum purchases insufficient to close
5 demand/capacity imbalance.

6 They had a problem. They knew they had a problem.
7 They had limited spectrum. And it wasn't just internally
8 that they were saying they had a problem.

9 We're going to show you documents that they filed
10 with the Securities and Exchange Commission. This was one
11 from December 31 of 2014.

12 The SEC is that governmental agency that regulates
13 publicly traded companies, and T-Mobile is obligated to
14 disclose to its shareholders in the outside world what
15 challenges it might face.

16 And from Pages 9, 11, and 14 of Plaintiff's
17 Exhibit 76, we'll take a look at what they were telling the
18 world.

19 Under competition, they said: AT&T and Verizon
20 are significantly larger than us and may enjoy greater
21 resources and scale advantages as compared to us.
22 Competitive factors within the wireless telecommunications
23 industry include -- one of the things they talk about --
24 availability of additional spectrum licenses.

25 They then talk about the risks related to their

1 industry, the scarcity and cost of additional wireless
2 spectrum and regulations relating to spectrum use may
3 adversely affect our business strategy and financial
4 planning.

5 If we are unable to take advantage of
6 technological developments on a timely basis, then we may
7 experience a decline in demand for our services or face
8 challenges in implementing or evolving our business
9 strategy.

10 They needed to take advantage of technological
11 developments. They're telling the world that. And they're
12 busy acquiring spectrum, but they need an answer to this
13 problem of how do we get more bandwidth?

14 Guess what they did? They launched VoLTE, Voice
15 over LTE. They called it innovation in growth. And what
16 do they call it? Technically and economically superior.
17 VoLTE only voice technology for 700 megahertz -- that's the
18 spectrum that they're transmitting in -- and critical for
19 us getting to 300 million covered pops in 2015. Pops is
20 population.

21 Remember the commercials with the map wars; people
22 were talking about how many people they could cover in the
23 U.S.?

24 They'll refer to this as the end of the map wars
25 because they were able to maximize the use of that limited

1 spectrum, and it worked for them.

2 You're going to -- you're going to get to see
3 documents, and you're going to see how their profits
4 exploded. They became much more profitable. They reached
5 lots more customers.

6 And guess what they did in 2017? They had to tell
7 the world about it in their SEC filings, Securities and
8 Exchange Commission.

9 They filed under penalty of perjury. They swear
10 that the information contained in those documents is
11 accurate because, if you don't, you can go to jail.

12 And what did they swear to then?

13 We continue to expand our capacity through the
14 re-farming of existing spectrum and implementation of new
15 technologies, including Voice over LTE, VoLTE.

16 Remember that. They called this a new technology
17 when they were swearing things out in their SEC filing.

18 What else do they say?

19 Moving voice traffic to VoLTE frees up spectrum.
20 We are leading the U.S. wireless industry in the rate of
21 VoLTE adoption.

22 They took Dr. Jorgensen's inventions, they
23 employed them in this Voice over LTE network, and they
24 experienced the benefits that Dr. Jorgensen will tell you
25 he envisioned, that he applied for patents for and that he

1 received patents on. He'll take that stand in probably
2 about 45 minutes, and you'll get to hear that testimony.

3 We think the evidence of infringement will be
4 pretty compelling. That's why the Defendants are going to
5 change horses, and they're going to say, yeah, we said that
6 was new technology, but, actually, it's old technology.

7 And you're going to hear Ericsson claim it.
8 Ericsson's going to -- Ericsson will tell you: We invented
9 it first. And maybe we didn't invent it first, but it
10 would have been obvious. That's another defense they have.

11 They're going to say that for the '206 patent,
12 which we say has a priority date of July 10th, 1998, and
13 they're going to say there were things that came before it,
14 prior art.

15 And, listen, there are patents that come before
16 it. There are lots of publications. The key that you'll
17 have to be watching for are: Do those prior publications,
18 prior patents disclose all the elements that are present in
19 the '206 patent? That's the inquiry.

20 Because they're going to say the same thing about
21 the '517 and the '629 patents, that they're all -- all
22 invalid.

23 They'll say that all three of these patents,
24 examined by different examiners at different times, were
25 issued in error and that they're worthless.

1 Because, if you find these patents invalid, you're
2 finding them worthless.

3 You tear them up for all time. It's not just for
4 this case. That's why the law says they've got to prove
5 those things to you by clear and convincing evidence, and
6 we're going to hold them to that burden, and I hope you all
7 will, too. I know you will.

8 Because then we're going to turn to damages, and
9 we're going to bring you Mr. Walt Bratic.

10 Mr. Bratic, are you in the courtroom?

11 There's Mr. Bratic. Mr. Bratic has got his degree
12 in economics and a master's in business from the University
13 of Pennsylvania. He is a partner at a firm called Whitley
14 Penn.

15 You're going to learn he's got lots of
16 certifications. He's certified -- he's a certified public
17 accountant, a certified fraud examiner, a certified
18 licensing professional, and he is certified in financial
19 forensics.

20 He's been doing this for over 30 years. He's
21 negotiated real-world licenses, and he does something
22 interesting in this case.

23 THE COURT: Three minutes remaining.

24 MR. WARD: Thank you, Your Honor.

25 Ericsson's going to tell you about all their

1 patents, how great they are. And they've got some strong
2 patents, and we're going to acknowledge that they've got
3 some strong patents.

4 In fact, Mr. Bratic looks at Ericsson's licenses
5 to see how much they're getting paid for their use of
6 technology.

7 Their experts are not going to look at any
8 licenses. They say, oh, let's just look at what you
9 invested, and we'll give you a return on that and we'll
10 call it good.

11 We're going to look at the use of the technology
12 because you're going to learn that these Defendants,
13 especially T-Mobile, has used it a lot.

14 And he's going to calculate a royalty rate of 6.3
15 cents, and he'll explain that to you, times the number of
16 months that their users have been using this technology,
17 and you'll learn it's 1.2 billion user months. We've got
18 tens of millions of users. How many minutes they use it on
19 a monthly basis over the years that they've been
20 trespassing on this property, and it's up to \$77 million
21 that T-Mobile owes for using this property.

22 We think it's unfair what the un-carrier has been
23 doing. We think it's unreasonable. And at the conclusion
24 of this case, once we've presented all the evidence to you,
25 I will unapologetically ask you to find that these

1 Defendants have trespassed on Dr. Jorgensen's inventions,
2 IV's property, that they infringe, that these claims are
3 invalid, and that they owe for using IV's patented
4 property.

5 Thank you for your time.

6 THE COURT: All right. Defendants may now present
7 their opening statement to the jury.

8 Would you like a warning on your time, Mr. Kubehl?

9 MR. KUBEHL: Yes, Your Honor, five minutes,
10 please.

11 THE COURT: All right.

12 MR. KUBEHL: I've got a couple of demonstrative
13 components of a base station I'd like to place on the table
14 if the Court would allow. They're just back here --

15 THE COURT: On the table in front of the courtroom
16 deputy?

17 MR. KUBEHL: Yes, Your Honor.

18 THE COURT: All right. All right. Proceed with
19 your opening statement.

20 MR. KUBEHL: Thank you, Your Honor.

21 Good afternoon, ladies and gentlemen. My name is
22 Doug Kubehl, and I am very privileged to represent Ericsson
23 and T-Mobile in this case.

24 I'm going to start by giving you a little bit more
25 background about Ericsson, in particular, because you're

1 not hearing much about Ericsson.

2 What I've put on the table here are some
3 components that live inside of the base station.

4 So the base station, you heard, is this box that
5 sits maybe on top of a building, and it connects to
6 antennas. And what the base station does is it serves as
7 sort of a middle man between our phones on one side and the
8 Internet on the other side.

9 So the base station talks wirelessly to our
10 phones, and on the other side, it gets information from the
11 Internet, and it lets it flow in between.

12 So these boxes on the top of the buildings are the
13 base stations. And what I've put here are some of the
14 components from the base station.

15 Most of us will never get a chance in our life to
16 see those things. We're going to hear from some Ericsson
17 witnesses about what those do, how they're put together,
18 and specifically how they work.

19 But Ericsson is the one who designed that.
20 Ericsson built it. Ericsson sold it to T-Mobile. And
21 Ericsson stands behind it. Ericsson is here today to
22 defend itself and its customers because it does not use
23 those three patents. And we'll show that to you.

24 You wouldn't -- you wouldn't know that Ericsson
25 was really a Defendant in this case if the Judge hadn't

1 told you.

2 If you looked at all of the slides that we saw
3 from IV, it was all focused on T-Mobile. T-Mobile is a
4 customer of Ericsson. Ericsson is the one that has the
5 knowledge and built those things, and Ericsson will show
6 you why they don't infringe.

7 So let me tell you just a little bit about
8 Ericsson. It's a worldwide company, and its headquarters
9 are in Sweden, but the U.S. headquarters are down the road
10 in Plano, Texas. They employ about 3,000 people there.

11 I'm going to show you here the Ericsson logo.

12 May I have the next slide, please?

13 So when I first saw this, I thought it was just an
14 E, and it turns out it's -- it's a representation of an
15 electrical component called a transformer. And it
16 represents what Ericsson hopes to be, and that's a
17 transformer of technology, an inventor.

18 You're hearing -- next slide, please.

19 You're hearing a lot about LTE. That's stands for
20 long-term evolution. And sometimes it's called 4G. And I
21 know you all know that if there's a 4G, there was probably
22 a 1G, a 2G, and a 3G.

23 We saw a little bit of that on the slides this
24 morning. There have been multiple generations of this
25 technology.

1 Next slide, please.

2 What I'm showing here are some milestones that
3 you'll hear from the Ericsson witnesses about -- about some
4 good work they did in the 1G, 2G, and 3G technologies.

5 And counsel is right, no -- there's no one
6 company out there that's inventing everything in a
7 generation of technologies. There's no doubt about that.

8 And we're going to hear about some of the
9 particular things that Ericsson accomplished in -- in these
10 earlier generations of technology, but the point that I
11 want you to take away from this slide is change.

12 The 2G systems that were in the '90s, those were
13 improvements over the 1G systems from the 80s. And just
14 like the 3G systems in the early 2000s, were big
15 improvements over the 2G systems. That's why they're
16 called generations of technologies because there are
17 differences. There are significant differences between
18 these technologies.

19 The patents in this case, as you saw from the
20 slide from the Plaintiff, were filed back about at the end
21 of the second generation of wireless technologies.

22 By the time Ericsson was developing the fourth
23 generation -- two generations later of technology, you're
24 going to hear evidence that the old ideas from the 2G
25 networks just didn't translate to what was needed in the 4G

1 networks.

2 So what Ericsson did is they came up with new ways
3 of doing it. It came up with its own inventions, different
4 from those three patents, and it created successful LG --
5 LTE technology.

6 And you don't have to take Ericsson's word for
7 that.

8 Next slide, please.

9 What I'm showing you here is an exhibit you'll see
10 in the case, and that's a document that the European Patent
11 Office put out.

12 So the European Patent Office is Europe's version
13 of our United States Patent Office. And so this is an
14 agency whose job it is, is to receive patent applications
15 and review everybody's applications for the inventions they
16 might have, for all kinds of different technologies.

17 And what the European Patent Office did in the
18 year 2014, which not coincidentally, is the year that the
19 technology that they're accusing of infringement was first
20 put out.

21 In that year 2014, the European Patent Office
22 recognized Ericsson for -- a finalist as the inventor of
23 the year for Ericsson's contributions in LTE technology.

24 And Ericsson wasn't -- wasn't one of several
25 companies that were recognized for this. They were the

1 company in LTE that was recognized for this.

2 And the -- and the Patent Office recognizes what
3 Plaintiff's counsel and what I'm recognizing, that LTE
4 technology consists of thousands of individually patented
5 inventions.

6 There's no one patent or two patents or three
7 patents or a hundred patents that you can say that's really
8 what's driving LTE. There are thousands of patents. And,
9 in fact, you're going to hear evidence that Ericsson itself
10 has thousands of LTE patents.

11 This will become an issue in the case because when
12 it comes to damages, the Plaintiff wants to compare the
13 three patents of Malibu Networks to the hundreds of U.S.
14 patents -- LTE U.S. patents that Ericsson has. And their
15 theory is that if you look at these three patents from
16 Malibu Networks, those would be worth one-third of the
17 amount of all of Ericsson's LTE patents. That's part of
18 how they get way up to \$77 million. And we're going to
19 show you that that's just not right.

20 Next slide, please.

21 So you've -- you've heard a lot about T-Mobile.
22 What I have to say about T-Mobile is I -- I am proud to
23 represent them, but they're Ericsson's customer.

24 They buy base stations. I heard no less than
25 three times today that this case is about that. This case

1 is about that base station.

2 And T-Mobile doesn't make base stations. You
3 heard a reference to, well, here's -- here's their product.
4 Here's their product. It's Ericsson's product. Ericsson
5 is in the case. Yet they refuse to acknowledge us, and
6 I'll tell you why that is later when we talk a little bit
7 more about damages.

8 A little bit about the Plaintiff. You hear
9 general references to the company IV. He says IV, oh, we
10 do a lot of things. And one of the things we do is we buy
11 some patents, and we try to make a return on investment.

12 And let's just be clear that the Plaintiff in this
13 case, the Plaintiff in this case is not IV. The
14 Plaintiff -- and this is the complaint that they filed --
15 is Intellectual Ventures I LLC.

16 That I stands for Fund No. I, and what Fund No. I
17 does is it buys patents, sells patents, tries to license
18 patents, and it sues people. That's what they do, period.
19 There's no -- there's some other things that we do. That's
20 what they do.

21 I think they'll admit to us that they've never
22 made or sold any products, that they didn't invent anything
23 in this case.

24 They're in this case because in 2004, they bought
25 a collection of 22 -- 22 patents from Malibu Networks for

1 \$900,000.00.

2 And today, they're asking for damages of 77
3 million. And that number, it's said with such ease, right?
4 \$77 million, that's what we're entitled to. That's a lot
5 of money.

6 And let's just be clear here, here's a slide that
7 came from the -- the presentation that you saw from
8 Plaintiff. And he said, look, these three patents,
9 \$900,000.00.

10 I'm not sure what he's trying to show here, but
11 the evidence will show there were 22 patents that were sold
12 in that transaction.

13 In this case, you're going to hear from Ericsson's
14 witnesses. You're going to hear from Mr. Johan Norrby.
15 Mr. Norrby is on the business side of Ericsson.

16 Thank you, Mr. Norrby. He's in charge of the
17 financials for the hardware that goes inside of the base
18 station. He's the corporate representative. He's flown
19 here from Sweden. He's going to be here all week for this
20 important case for Ericsson.

21 I want to introduce you to Mr. Stephen McGrath.
22 Mr. McGrath is the principal corporate counsel of
23 intellectual property for T-Mobile. He's been in charge of
24 this case since its inception. And he's going to be here
25 all week with us, as well.

1 Okay. I want to turn to the job that we all have
2 ahead of us this week, and that's really these patents,
3 analyzing these patents, determining whether there's
4 infringement, determining whether they're valid, and there
5 is -- there is quite a bit of work to do.

6 And I certainly can appreciate the eight of you
7 and how you must feel, how I would definitely feel if I had
8 to come in here and think I have to make decisions.

9 I mean, his presentation was, I think, intended to
10 be like really high level, and I'll just show you some
11 concepts, and we'll get into the details later. But I
12 looked at that and thought, wow, that -- that -- that seems
13 really complicated.

14 So we've got some folks to help you learn the
15 technology, as well. One of the folks you'll hear from is
16 Dr. Stephen Wicker.

17 Dr. Wicker?

18 Dr. Wicker is a Ph.D. in electrical engineering,
19 and he's a professor at Cornell University. He's been in
20 the wireless industry for over 30 years. He's given talks
21 to Congress and the White House on cellular technology.
22 He's been studying LTE since there was an LTE. He teaches
23 courses on it. He writes books on it. He does papers on
24 it.

25 What he's going to do is he's going to help us

1 understand LTE. He's going to help us understand these
2 base stations. And he's going to compare those base
3 stations to the patents, and you'll hear that in his
4 opinion, he believes that there is no infringement of any
5 of these patents.

6 The other person that will help us will be
7 Dr. Tony Acampora. Dr. Acampora also has a Ph.D. in
8 electrical engineering. He's got over 50 years experience
9 in the industry. He's the director of the University of
10 San Diego's Center For Wireless Communications. He was at
11 Bell Labs for what most people might consider a career.
12 He's been awarded over 40 patents.

13 And what his job was, was to analyze whether the
14 patents that were issued to Malibu, whether there was prior
15 art that actually was the same as the Malibu patents.

16 So something that came before the Malibu patents
17 that makes it so that they shouldn't have got the patent
18 because the same idea was out there already. So he's
19 analyzed that, and he's going to tell us all about that.

20 Okay. You haven't seen this yet.

21 Sorry about that.

22 I doubt nobody's seen one of these yet. This is
23 what the Court was talking about. It's a patent claim.

24 So the patent -- you heard in the video and you
25 heard from the Court, the patent has drawings, and it has

1 descriptions, and at the end of it are these numbered
2 paragraphs called claims. And we look at the claim, and
3 that will be what we measure infringement on, and that will
4 be what we measure invalidity on.

5 So here's what I mean by that: You look at
6 this -- this text here -- and there's a lot of it -- and
7 it's paragraph after paragraph after paragraph, and each
8 paragraph has a whole bunch of concepts in it.

9 And what IV has to do to prove infringement is
10 they have to show you that each and every element of this
11 entire claim is in the Ericsson base station.

12 So your job will be to say, at the end of the
13 case, has IV proven to me that every one of the elements in
14 this claim is in that base station?

15 And not like most of the elements or, gee, it kind
16 of looks like it's kind of the same, but every single
17 element of the claim, that's what they have to prove to
18 show infringement. If there's even one element that's
19 missing, the Judge will tell you you have to find
20 non-infringement.

21 So I'm not going to try to explain this whole
22 claim to you today. There are differences, for sure,
23 between this and the Ericsson base station, but I'll focus
24 on one that I think was easy for me to understand, at
25 least.

1 So this claim is called -- it's called a method
2 claim. So it's a process of doing a bunch of steps. And
3 when you look at infringement, you're going to have to
4 decide, are all of these steps done in just the way it
5 says.

6 And one of the steps that has to happen -- and
7 I've highlighted it in yellow at the bottom -- is this --
8 communication has to be made from that -- from a base
9 station to what's called a CPE device.

10 Now, when Plaintiff was going through this, he
11 said -- he showed you a picture of a mobile phone. He
12 said, yeah, they call these things CPE devices. I don't
13 know if any of you have ever called your cell phone a CPE
14 device, but I'll tell you what the Court will tell us we
15 have to use as the definition of what a CPE device is.

16 So the Court was telling us, I've construed some
17 claims, and we all have to apply these definitions for
18 these claim terms.

19 So in this one particular word in this claim in
20 this patent, this term CPE station: Devices residing on
21 the premises of a customer and used to connect to telephone
22 networks, including ordinary telephones, key telephone
23 systems, PBXs, videoconferences devices and modems.

24 So everybody knows what an ordinary telephone is.
25 A lot of us don't have them anymore. We just have our

1 mobile phones. The one thing that you'll hear from
2 Dr. Wicker is what all these things have in common is they
3 sit in one place.

4 You'll hear that Malibu Networks was in the
5 business of what was called fixed wireless. So it was a
6 wireless signal that would go from a base station, but then
7 it would go to something bolted to your house, and then
8 from there, you could get some signals inside the house.
9 But the CPE equipment, customer premises equipment, is
10 something that resides on the premise.

11 So Dr. Wicker will explain to us his opinion, but
12 I bet a lot of you already have some inklings that your
13 phones, your cell phones, those are not devices residing on
14 the premise.

15 So that's one example of something that's missing
16 from this patent. We'll show you more examples, but I did
17 want to show you the claims and not just kind of show you
18 today's technology, hold up three patents, and say, see, we
19 invented it. When we get into the claims, you see there's
20 big differences.

21 Next slide, please.

22 Okay. This is the second patent, and I'm going
23 to -- I'm going to show you one difference in each one of
24 these patents, and I think this week we'll probably talk
25 about several differences in each of them.

1 This one he called the '206 patent, and it has
2 this term called end-user quality of service requirements.
3 And all you really heard from Plaintiff's counsel was some
4 talk about quality of service.

5 We want some good quality of service. But this
6 patent requires a particular thing: End-user quality of
7 service requirements.

8 So if you've ever, on your phone or on a tablet or
9 your TV, tried to stream something, stream a movie or a
10 show, and then sometimes the video will kind of stop, and
11 then maybe it will start going again, and that could be
12 because the network is just not providing us enough
13 bandwidth.

14 So what I would like -- I'm the end-user; you're
15 the end-users. What we would like, we sure would like to
16 have the network provide us enough bandwidth -- guarantee
17 us enough bandwidth so that I get to see it like I should
18 see it. That would be my end-user quality of service
19 requirements.

20 Okay. Well, that sounds pretty good. So what
21 would be the problem, though, if every one of us could set
22 our own end-user quality of service requirements and then a
23 network like T-Mobile would have to satisfy them? And
24 every one of us wants everything the best. And T-Mobile
25 would not have the resources to be able to satisfy that.

1 So the way it actually works is a network provider
2 like T-Mobile uses network quality of service requirements.

3 T-Mobile is the one who decides which different
4 applications get which kind of quality of service so that,
5 as a company, it can balance the needs of all the different
6 traffic types and provide the best service to everybody.

7 So this patent, end-user quality of service
8 requirements, in reality, what happens in the world, it's
9 network quality of service requirements.

10 Dr. Wicker will tell us there's no infringement
11 here for this and for other reasons on this patent.

12 Okay. Last patent, last patent claim that you'll
13 have to look at from me today probably. The '629 patent.

14 So this '629 patent is about -- this base station
15 has got lots of phones that want to talk to it, and the
16 base station has to decide who gets to talk to me next.
17 And oftentimes, there's more phones than resources
18 available, so you've got to figure out who gets what.

19 What this '629 patent was about was, well, I have
20 a good idea. For this given phone call, why don't I look
21 out into the future and reserve resources, not one time in
22 the future but two times out into the future, and then that
23 way, as this guy needs resources, he's got them waiting for
24 him. They're reserved for him.

25 Let me see if I can make it a little more

1 understandable.

2 The patent is like a restaurant that requires you
3 to have reservations. It would say you have to make a
4 reservation one week out in advance and then make another
5 reservation two weeks out in advance.

6 And when Dr. Wicker goes through the claim with
7 you, you'll see where that comes from in the claim, but the
8 concept is that I'm going to allow my phones to have
9 resources by looking out into the future and reserving
10 these spots for them.

11 Okay. That -- that sounds kind of like, okay,
12 wouldn't everybody do that? Not necessarily. One thing
13 that's really, really cool about that box over there is
14 it's making a thousand decisions a second. Every single
15 second it's figuring out which phones get which resources a
16 thousand times.

17 Next slide, please.

18 And so the way it works in the Ericsson base
19 station is, instead of reserving these spots in the future,
20 Ericsson works more like a restaurant that doesn't take
21 reservations. It has phones show up when they need
22 resources, and it has a competition between the phones.

23 And much like a restaurant that doesn't take
24 reservations, whether you win this competition kind of
25 depends on how long you've been waiting. The longer you've

1 been waiting to get the right to transmit, the better
2 chance you have of getting a right.

3 And so Dr. Wicker will tell you that this concept
4 of having a competition for these resources, that's the
5 opposite of reserving resources in the first place. So for
6 that reason, Dr. Wicker will explain there's no
7 infringement of this patent.

8 The bottom line in all these patents is that they
9 relate to ideas that maybe at one time had their time, but
10 at least in Ericsson's version of the LTE network, they
11 weren't the right choice.

12 And we'll show you documents from Ericsson,
13 internal design documents where Ericsson actually looked at
14 processes like, hmm, should we look future reservations?

15 And they found out that actually causes some
16 technical problems, and they decided we're not going to do
17 that. We're going to, instead, go the way that we ended up
18 today.

19 We'll see in the LTE network discussions that
20 there were actually some discussions, should end-user QoS's
21 be used, or should the network decide it? And Ericsson
22 said the network should decide it. And that -- that
23 actually is the way LTE went. It's certainly the way
24 Ericsson went.

25 So we'll actually see documents that will -- that

1 will back up that these are -- these are -- the patents are
2 real techniques, but they were really rejected. Ericsson
3 doesn't use them.

4 Okay. Let's go two slides forward, please.

5 All right. The issue of invalidity. I was -- I
6 was kind of hoping that at least we'd get some sort of
7 high-level description of the '206 patent from the
8 Plaintiff's counsel, but we really didn't hear much.

9 The -- there's not much to that claim. Basically,
10 when you see that patent claim -- and I showed it to you on
11 the infringement, but it's basically a concept of
12 classifying these things called packets based on what's
13 called end-user quality of service requirements, and then
14 scheduling those packets, figuring out what order they
15 should go in.

16 That -- that's kind of paraphrasing, but -- and
17 the experts will certainly get down into every single word
18 of the claim, and that's their job on invalidity. We've
19 got the same job that they have on infringement.

20 On invalidity, the tables are turned. We've got
21 to show you that all those elements are shown in any prior
22 art that we show you. And it is a clear and convincing
23 standard, not a preponderance standard, that is true.

24 THE COURT: Five minutes remaining.

25 MR. KUBEHL: Thank you, Your Honor.

1 But what we're going to see, what I'm showing you
2 on this slide, this is to Mr. Jan Forslow, this is an
3 Ericsson patent, May 1998. It's a United States patent.

4 And we're going to show you that Mr. Forslow
5 invented the concept that we see here, classifying and
6 scheduling packets corresponding to each application flow
7 from the external network to the mobile radio host over the
8 bearer in accordance with the quality of service
9 corresponding to the application packet stream.

10 And I -- I sort of made a big deal out of this
11 end-user quality of service, and that's in here. That's in
12 here. You're going to see it verbatim in there.

13 All right. So we're -- we are going to show you
14 that with respect to that '206 patent, that it is invalid.

15 You've got Ericsson coming up with exactly the
16 same idea and doing it first, and they have a United States
17 patent to prove it, and Dr. Acampora will show you that.

18 All right. I'll -- I'll close just by making a
19 couple of comments about their damages case. And in his
20 opening, when he said that we had some particular number
21 that we agreed we'd pay, the number is zero. Unfortunately
22 for them, the number is zero.

23 We don't use these patents. The patents are
24 invalid. And that's not an either/or. This isn't a, well,
25 if you don't believe us here, then how about this? We

1 don't infringe these patents, and these patents are
2 invalid. The number is zero.

3 Now, one thing I'd like you to ask yourself as you
4 consider the evidence in the case and especially on this
5 damage's side, \$77 million, that's their number.

6 Okay. You've heard base station, base station,
7 base station. Everybody agrees. That's what the case is
8 about.

9 You'll see that even Mr. Bratic, who stood up back
10 there, he's going to have to admit that to get to
11 \$77 million, even under his analysis, he didn't use any
12 licenses that were about base stations. He used licenses
13 that are about phones. So ask yourself, why? Why is he
14 doing that?

15 Well, the answer will become pretty clear that
16 when you see that he also did an analysis of license --
17 licenses that cover a base station. What do you think
18 happened to that \$77 million number, even in his own
19 report?

20 It went from 77, dropped almost 90 percent down to
21 \$9 million. And that's on his best day.

22 He says, yes, if I'm looking at Ericsson is the
23 infringer, which that's what they say in this case, and I'm
24 looking at a base station and a base station license, which
25 that's what we have, he says, on the best day, it's

1 \$9 million.

2 Now, Dr. Becker will show you why that \$9 million
3 is unreasonable, as well. And we look forward to walking
4 through that with you.

5 This will be my last chance to talk to you before
6 our closing arguments, and so I just want to take this
7 moment to thank you on behalf of Ericsson and T-Mobile for
8 what I know is going to be a hard week, a lot of attention
9 required, and we just thank you so much for the
10 consideration you're going to give.

11 THE COURT: All right. Ladies and gentlemen,
12 before Plaintiff calls their first witness, we're going to
13 take a short recess.

14 I'm simply going to allow you to close and leave
15 your notebooks in your chairs. I don't expect this to be
16 very long. Follow all the instructions over the recess
17 that I've given you, including, of course, not to talk
18 about the case among each other or with anyone. And we'll
19 be back in here shortly to continue with Plaintiff's first
20 witness.

21 The jury is excused for recess.

22 COURT SECURITY OFFICER: All rise.

23 (Jury out.)

24 THE COURT: Be seated, please.

25 I now am under the impression that Plaintiffs have

1 dropped their willfulness claim; is that correct?

2 MR. WARD: That is correct, Your Honor.

3 THE COURT: And did that happen overnight,
4 Mr. Ward?

5 MR. WARD: It did, and we failed to bring it to
6 the Court's attention.

7 THE COURT: You sure did, until the middle of my
8 instructions when I was instructing them about willfulness
9 is when my staff got the email.

10 MR. WARD: Yes, sir.

11 THE COURT: There's no reason to not tell the
12 Court when you're telling the other party.

13 MR. WARD: I agree with you, Your Honor. It was
14 an oversight, and I apologize.

15 THE COURT: All right. I trust it won't happen
16 again.

17 We're going to take a short recess. When we come
18 back, I'll -- I'll inquire as to whether either side wishes
19 to invoke the rule. Do you know what your preferences are
20 in that regard?

21 MR. WARD: It is our preference to invoke the
22 rule, Your Honor.

23 THE COURT: I assume that excludes expert
24 witnesses?

25 MR. WARD: It does.

1 THE COURT: Does that comport with the Defendants'
2 posture, Mr. Kubehl?

3 MR. KUBEHL: It does, Your Honor.

4 THE COURT: All right. Well, we'll do that on the
5 record before I bring the jury back in -- or, excuse me,
6 after I bring the jury back in.

7 In the meantime, we'll take a short recess. The
8 Court stands in recess.

9 COURT SECURITY OFFICER: All rise.

10 (Recess.)

11 COURT SECURITY OFFICER: All rise.

12 THE COURT: Be seated, please.

13 All right. Plaintiffs, are you prepared to call
14 your first witness?

15 MR. FLANNERY: Yes, Your Honor.

16 THE COURT: All right. Let's bring in the jury,
17 please.

18 (Jury in.)

19 THE COURT: Please be seated, ladies and
20 gentlemen.

21 Does either party wish to invoke the rule?

22 MR. WARD: We do, Your Honor.

23 THE COURT: All right. Do I understand that it's
24 your request that the rule exclude expert witnesses?

25 MR. WARD: And corporate representatives, yes,

1 Your Honor.

2 THE COURT: All right. The rule has been invoked,
3 which means if you expect to testify in this case and you
4 are not an expert witness or a corporate representative,
5 then you must remain outside the courtroom until such time
6 as you are called to the witness stand.

7 So any fact witnesses that would be covered by the
8 rule that are present in the courtroom should exit at this
9 time.

10 MR. WARD: Our first witness is a fact witness, so
11 that's who we'll be calling. But other than that, there's
12 no one else for the Plaintiff.

13 THE COURT: Well, no reason to take him out and
14 then bring him back in.

15 MR. WARD: Thank you.

16 THE COURT: All right. The rule has been invoked.
17 Plaintiff, call your first witness.

18 MR. FLANNERY: Your Honor, Intellectual Ventures
19 calls Dr. Jacob Jorgensen.

20 THE COURT: All right. If you'll come forward,
21 Dr. Jorgensen.

22 If you'll come around, our courtroom deputy will
23 administer the oath to you.

24 (Witness sworn.)

25 THE COURT: All right. Now if you'll come around

1 and have a seat here at the witness stand.

2 All right. Counsel, you may proceed.

3 MR. FLANNERY: Your Honor, may I show the slides?
4 May I demonstrate slides?

5 THE COURT: Are these a demonstrative, or are they
6 a pre-admitted exhibit?

7 MR. FLANNERY: Yes, just slides -- slides he's
8 going to use to guide his testimony.

9 THE COURT: All right. Let's proceed -- proceed
10 with your direct examination.

11 MR. FLANNERY: Thank you, Your Honor.

12 JACOB JORGENSEN, PH.D., PLAINTIFF'S WITNESS, SWORN

13 DIRECT EXAMINATION

14 BY MR. FLANNERY:

15 Q. Good afternoon, Dr. Jorgensen.

16 A. Good afternoon.

17 Q. Tell the jury a little bit about yourself. Where did
18 you grow up?

19 A. I grew up in Seattle and Sacramento.

20 Q. And where do you live now?

21 A. Small town just outside of Sacramento called Folsom.

22 Q. And is -- is that the Folsom where Johnny Cash went to
23 prison and recorded that famous concert while he was an
24 inmate?

25 A. I'm afraid so. That's how we're known.

1 Q. Okay. And do you have a family?

2 A. Yes, I do. I have three grown children and eight
3 grandchildren.

4 Q. Tell the jury about your education. Where did you go
5 to college?

6 A. MIT.

7 Q. And what was your focus at MIT?

8 A. Theoretical physics, specializing in quantum theory.

9 Q. So that's Massachusetts Institute of Technology. Was
10 MIT considered one of the leading scientific universities
11 in the world?

12 A. I believe so, yes.

13 Q. And did you intend to work in the field of physic after
14 graduating from MIT?

15 A. I did. I intended to pursue my Ph.D. in physics and
16 spend my life practicing in physics.

17 Q. Did you, in fact, work in the field after MIT?

18 A. No, I didn't.

19 Q. What were you going to do?

20 A. I, instead, went to medical school.

21 Q. Okay. Did you know you were going to go to med school
22 before you graduate -- before you graduated from MIT?

23 A. Yes, but only in my last year, so I had to pick up some
24 prerequisites.

25 Q. And what did -- what did you do?

1 A. So I had to go to summer school at Harvard to pick up a
2 year's worth of organic chemistry.

3 Q. And where were you going to go to Columbia -- medical
4 school?

5 A. Columbia Medical School --

6 Q. Okay.

7 A. -- New York City.

8 Q. Thank you. So you're at MIT, then you took classes at
9 Harvard, and now you're off to Columbia for medical school.
10 Did you do anything before that?

11 A. Yes, I -- summer between I worked on a medical device
12 that measured intravenous fluids in patient care.

13 Q. And was that your first invention?

14 A. Sort of. I'd always been tinkering with devices, you
15 know, since high school. I invented a new kind of particle
16 accelerator, which I built.

17 Q. Did you graduate Columbia eventually and become a
18 doctor?

19 A. Yes, I did.

20 Q. And tell the jury what you did after medical school,
21 please.

22 A. Well, the standard thing that all med school graduates
23 did, I did an internship for a year, residency, training
24 for three years, and then a fellowship for two years after
25 that.

1 Q. Did you perform surgeries?

2 A. Yes, I did.

3 Q. Did you do research?

4 A. Yes.

5 Q. And did you work on any more inventions during your
6 medical training?

7 A. I worked on a couple more medical devices involved in
8 patient care.

9 Q. Okay.

10 MR. FLANNERY: Next slide, please.

11 Q. (By Mr. Flannery) So let's talk a little bit more
12 about your background. The -- the technology in this case,
13 as the jury has heard, is telecommunications. How and why
14 did you go from being a surgeon to working on
15 telecommunications systems?

16 A. Well, I really loved patient care. I really loved
17 taking care of patients. But I also still felt really tied
18 into science and technology. And so I kept reading about
19 what was going on in the science and technology world, and
20 I read about what was going on in the 1980s with the break
21 up of AT&T in telecommunications. It seemed like there
22 were all sorts of new opportunities opening up.

23 Q. Okay. So you went to MIT, then you were a doctor, and
24 now you saw opportunities in telecommunications. Were you
25 going back to science?

1 A. Well, a little bit. I -- at MIT, I picked up the
2 electronic hardware design and computer software
3 programming. But I didn't really learn anything about
4 telecommunications.

5 Q. So did you have to teach yourself telecommunications?

6 A. Yes, I did. And, of course, I had a full-time job, so
7 I went at night. After my time in the hospital, I would go
8 to the library and study textbooks and articles about
9 telecommunications theory for two to four hours, whenever I
10 had the opportunity at night.

11 Q. So you were working all day in the hospital, and then
12 teaching yourself telecommunications at night?

13 A. That's correct.

14 Q. And how long did you do that for?

15 A. About two years.

16 Q. After teaching yourself telecommunications, did you
17 start to work on a business?

18 A. Yes. Along the way, I noticed that -- you know,
19 with -- even with the break up of AT&T, long distance calls
20 were very expensive. And -- and I thought, gee, there must
21 be a way to reduce the costs, so I had an idea about how I
22 might do that.

23 Q. And why were the costs of long distance calls so
24 expensive?

25 A. Well, I think because the telephone network was

1 controlled by just a few carriers, and so there wasn't a
2 lot of competitive pressure, but they had these very
3 complex rate price programs or rate sheets that people and
4 businesses had trouble finding the best rates for.

5 So I realized if I built a computer system that
6 attached to the network and helped determine what the least
7 cost for a particular call was, I'd be able to help people
8 save a lot of money.

9 Q. Did you start a company around these ideas?

10 A. Yes. That was Televector.

11 Q. And were you still a surgeon at this time?

12 A. I was.

13 Q. Tell the jury a little bit about Televector. What did
14 you do to start?

15 A. So this was a -- sort of a typical start-up thing. I
16 had an extra bedroom in my apartment in New York City that
17 was not being used, so I used that for my prototype lab.

18 I built my circuit boards there, and it got to the
19 point where I needed to build more than I could do, because
20 I had my job during the day.

21 So I hired some technicians to come in during the
22 day and -- actually four technicians would work there in my
23 apartment.

24 Q. And did you move the company out of your house
25 eventually?

1 A. Yeah. I really ran out of room because I realized I
2 had to hire more people. I had to hire some people that
3 knew financing and marketing and sales, which, you know, I
4 didn't know about.

5 So I found a loft in -- in downtown Manhattan and
6 hired more people. And we continued to produce the -- the
7 system.

8 And I would come in at night after hours, and
9 people were staying late at night because they were very
10 devoted people. And we would talk about changes and
11 improvements.

12 Q. So describe the culture at Televector.

13 A. So it was a real start-up. It was very tight-knit.
14 You know, there were -- there was no hierarchy, no titles.
15 Everybody did everything. And it was just a very -- a
16 wonder of experience for me.

17 Q. And did you eventually stop practicing medicine during
18 the time you were running Televector?

19 A. Yes. I decided to let my medical career complete at
20 the end of my fellowship. And then I spent a hundred
21 percent of my time devoted to Televector.

22 Q. And what happened to Televector?

23 A. Well, Televector continued to do very well. We sold
24 many of these computer systems.

25 And by this time, there was starting to be some

1 competition. So we needed to invest some more money. And,
2 unfortunately, my business partner did not want to take in
3 more outside money.

4 So, eventually, we just let the company shut down.

5 Q. And approximately what time frame are we in now?

6 A. I think that was about 1989.

7 Q. And after Televector, did you start another company to
8 integrate computers into telecommunications?

9 A. Yes, I did. That was EIS.

10 Q. And did you figure out something about the way telecom
11 companies operate that you wanted to explore with EIS?

12 A. Yeah. Of course, I had learned a lot about the network
13 and how it operated with Televector. And so I thought that
14 I could improve the way telephone -- long distance calls
15 were handled by customer support call centers.

16 And that involved getting information from a
17 telephone network through the use of a computer that was
18 attached to the network, which I had done already, and
19 letting a computer database know where the call came from.

20 So a sales representative or a customer service
21 representative would then know who was making the call and
22 say, oh, hello, Mr. Jones, we talked to you yesterday, I
23 see. How can I help you today? So it made the customer
24 relationship experience much better.

25 Q. And so before your -- your technology, companies

1 couldn't do that, they would just have to answer the call
2 and say hello?

3 A. That's correct. They had no idea who they were -- who
4 was calling them.

5 Q. Okay. And what kind of companies used this technology?
6 Did people buy it from you?

7 A. Yes. We had one of -- very large customers. We had
8 American Express as a customer. And AT&T was a customer.

9 Q. And you sold them computer systems?

10 A. Yes. In fact, American Express, I think we sold over
11 5,000 workstations to.

12 Q. Was EIS successful?

13 A. Very successful. And so much so that we went public
14 and continued to grow.

15 Q. And you started this company?

16 A. Yes. I and a few other people.

17 Q. Okay. What happened with your involvement in EIS?

18 A. Well, I -- I think this is around mid to late '90s,
19 '97, maybe, I was starting to learn about something new
20 called Voice over Internet Protocol, Voice over IP.

21 And up to this point, all telephone calls had to
22 go on copper wire. It was analog, and you had to have a
23 set -- you know, a telecommunications network for that.

24 But now, with this new VoIP technology, you could
25 send voice on packets on the Internet.

1 And I thought, wow, if you could combine voice and
2 data like Internet on this same network, you could do some
3 really cool things.

4 So I wanted the company, EIS, to make that their
5 next generation computer system was to combine the two.

6 Q. And did you eventually leave EIS?

7 A. Yeah. Well, unfortunately, EIS was so successful in
8 selling its present computer system, they didn't want to do
9 something new. So I left the company.

10 Q. Okay. So after you left EIS, you saw a future for
11 combining voice and data packets?

12 A. Yes. I thought this is the wave of the future, that
13 everything is going to be accessible through the Internet,
14 through the use of these packets.

15 Q. Okay. And how did you want to combine and
16 transmit these voice and data packets?

17 A. Well, I wanted to get into and out of the network, but,
18 you know, it was still very expensive to transmit on the
19 telephone network, and I thought there has to be a better
20 way.

21 So I started thinking about a different type of
22 access, and I started thinking about wireless. Maybe
23 wireless would be able to lower the cost for people, not
24 just for phone calls with this Voice over IP technology,
25 but wireless for -- for data.

1 Q. And what users were you initially focused on?

2 A. Well, I was thinking both home -- home -- people at
3 home and offices and businesses.

4 Q. Okay.

5 MR. FLANNERY: Next slide, please.

6 Q. (By Mr. Flannery) So tell the jury a little bit about
7 why you wanted to go wirelessly. What was going on at the
8 time?

9 A. Well, of course, since the beginning of telephones,
10 there was a huge investment over many, many decades into
11 the network, lots of cables and wires and computers and
12 servers, and companies like AT&T and others controlled it,
13 and it was hard -- it was expensive to get access to it.

14 And as I think we heard before, you can only do
15 one thing at a time.

16 You could either connect to the network to send a
17 voice signal or connect, you know, a computer with a
18 dial-up modem to get data. And I wanted to be able to do
19 both simultaneously. And seemed like I could figure out a
20 way to do that with wireless.

21 Q. Why did you think you could do that?

22 A. Well, I -- I was thinking that with packets, there
23 would be a way to transmit everything cost effectively, and
24 I would have to create some new technology in terms of
25 software to be able to handle the packets intelligently.

1 Q. So you indicated you were initially focused on users,
2 homes, and offices. Did you have a name for their devices?

3 A. For what -- I'm sorry?

4 Q. The users in their homes and offices, did you have a
5 name for their devices?

6 A. Well, at the time, I think that the terminology was
7 CPE.

8 Q. And what does that stand for?

9 A. Customer premises equipment. I think it's now --
10 people usually say UE.

11 Q. Okay. Were you -- were you working on cell phones at
12 the time?

13 A. Not necessarily, but I thought that the ideas I had for
14 wireless access into homes and businesses could work
15 equally well someday for mobile also, but --

16 Q. And do you -- do you know what term the industry uses
17 today to refer to mobile phones?

18 A. I think it's user equipment.

19 Q. Okay. So you call something customer premises
20 equipment, and today they call things user equipment. To
21 you, was it just equipment?

22 THE COURT: Just a minute. Just a minute. Just a
23 minute.

24 Mr. Kubehl.

25 MR. KUBEHL: Objection, leading.

1 THE COURT: Sustained.

2 Q. (By Mr. Flannery) How did you -- how did you relate
3 customer premises equipment to the devices that you were
4 working on?

5 A. Well, I -- the technology that I was thinking of would
6 work for homes and businesses and other applications,
7 regardless of whether it was actually in the home or
8 business or transported or, you know, had a mobile nature
9 to it.

10 Q. Okay. We'll get -- we'll get to that in a little bit.

11 So with reference to Slide 5, please explain
12 further the system that you envisioned.

13 A. So this is what I called a wireless point to
14 multi-point system. So it's this big -- you see an antenna
15 there, but the important thing is the base station,
16 connecting to, and the diagram shows, businesses and homes
17 and other devices.

18 And the idea was that in order to do this, both
19 voice and data, this base station had to be pretty darn
20 smart. And I was going to have to design some software
21 algorithms that would be able to handle that data and make
22 sure that everything didn't get all mixed up. And that was
23 one of the things I had to do.

24 And the other thing I had to do was make sure I
25 was using the wireless spectrum efficiently because

1 wireless spectrum is extremely precious and expensive.

2 And I thought that with all of that intelligence,
3 I could be sure to use all of that spectrum and thereby
4 make it less expensive to operate.

5 Q. And are these ideas that led to your inventions and the
6 patents that bring us here today?

7 A. Yes.

8 Q. Okay. So you --

9 MR. FLANNERY: Let's look at the next slide,
10 please, Slide 6.

11 Q. (By Mr. Flannery) You talked about what you wanted to
12 do. With reference to Slide 6, could you explain to the
13 jury some of the problems that you faced?

14 A. Right.

15 Q. Is it -- is it easy to combine and control these mixed
16 streams of information, like voice, Internet, and video in
17 a wireless environment?

18 A. Well, I think this was the big challenge. They are
19 very, very different -- voice streams, data streams are
20 very different in nature from Internet or video or email or
21 file columns. They all have different things that you need
22 to pay attention to.

23 And as an example for voice, if you send them in
24 these packets, they have to be sent at the same constant
25 rate; whereas, for Internet, they don't have to be sent at

1 the same constant rate, but you have to worry about being
2 very accurate, if they're all errors. Once in a while, if
3 there's an error in the voice packet, it's not that
4 important.

5 So each type of data had its own requirements for
6 quality. So that's what I was referring to when I said
7 quality of service.

8 Q. And what does this have to do with packets? Are there
9 a lot of them?

10 A. There are billions of packets. And what I realized how
11 many packets I'd have to deal with, I thought, oh, my gosh.
12 This is going to have to be a very fast problem.

13 And so that was another challenge, was I had to
14 touch every single packet because I had to understand, for
15 every packet, oh, is this a voice packet, or is this an
16 email packet? And then I had to categorize that packet.
17 Okay. This is an email packet. Oh, this is a voice
18 packet.

19 And then -- so that was the classification
20 process. So the program had to do that very fast, and
21 every single packet had to be touched and analyzed.

22 And then the system had to be able to take that
23 information and then figure out exactly where to send each
24 packet, depending on what type it was.

25 And -- and this is a very complicated process to

1 do in realtime to keep up with everything and not lose
2 it -- lose track of things.

3 And if you don't do that, what happens is voice
4 quality -- what happens is sometimes you can't hear the
5 voice at all or there -- it will certainly drop, or it will
6 be so distorted that you won't able to understand the other
7 person, or you'll have a file download that will have
8 errors, so we have to send it multiple times until we get
9 it right. So it would be a total mess without that
10 intelligence.

11 Q. Okay. And the jury is going to hear about and heard a
12 little bit already about bandwidth. How did that fit into
13 what you were doing?

14 A. Well, the easy way to do it is to allocate just a lot
15 of bandwidth and just use what you need and then maybe
16 things wouldn't bump into each other.

17 But I wanted it to be cost effective, and
18 wireless, as I said, the spectrum is very expensive.

19 So you have to be very parsimonious in usage of
20 that -- of spectrum.

21 So the intelligence would allow us to be very,
22 very efficient with the use of that radio and radio
23 spectrum.

24 Q. Did you start a company to design and develop these
25 ideas?

1 A. Yes, I did.

2 Q. And what was the name of that company?

3 A. That was Malibu Networks.

4 MR. FLANNERY: Okay. Let's look at the next
5 slide, please.

6 Q. (By Mr. Flannery) Would you please summarize for the
7 jury what you set to do with Malibu.

8 A. So we wanted to build an entire system, wireless point
9 to multi-point system, with a base station -- highly
10 intelligent base station, and receivers that would receive
11 the signal and communicate with the base station and would
12 be able to handle all of these different types of data,
13 which I mentioned, voice and email and all of that, at the
14 same time and nonetheless provide a really high quality of
15 service, so it would seem to the user that it was only that
16 data stream that was being sent because there was no
17 evidence of anything else interfering with it.

18 So very high-quality service from end-to-end, from
19 one end of the conversation or the server to the -- to the
20 user. And --

21 Q. There's a reference there to maximize efficient use of
22 bandwidth. Could you just elaborate on that a little bit.

23 A. Sure. And I think I mentioned that it's -- it's the
24 real challenge to do it while minimizing the amount of
25 bandwidth that you're using.

1 So every spare bit of spectrum is utilized. So
2 every split second when, you know, the radio could go out
3 without any data, you need to find a way for data to get
4 into there -- into that spot so you're using it all while
5 still maintaining that quality.

6 Q. Okay. Let's talk about how you did it.

7 MR. FLANNERY: Next slide, please.

8 Q. (By Mr. Flannery) Did you need to work with the
9 existing telephone network technology?

10 A. Yes.

11 Q. Could you explain to the jury about that, please.

12 A. So our base stations would be located -- would be --
13 would communicate with each other over the core network, as
14 illustrated here, and that -- I think we've heard the ATM
15 doesn't mean automatic teller machine.

16 It's a specialized kind of computer that's used
17 by telephone network carriers, and it's called asynchronous
18 transfer mode. That's why they abbreviated it ATM.

19 So that's in the middle. And it does its job by
20 sending out what I call pipes from one end to the another.

21 And it doesn't really see what's in the pipes,
22 doesn't care what's in the pipes, but packets can flow
23 through the pipes, and that's all I needed, packets from
24 one base station to the other as an example.

25 MR. FLANNERY: Okay. Let's go to the next slide,

1 please.

2 Q. (By Mr. Flannery) Now, could you explain a little bit
3 more about the packets and how it was your ideas to use
4 packets.

5 A. Okay. So I think we heard that -- you know, what the
6 packets were all about, but they're actually divided into
7 two sections.

8 There's one section where the actual data is
9 carried. That's where the email or the files or the
10 website part of it is in there.

11 And -- and then there's another part of the packet
12 called a header. And the header just tells where it's
13 going, where it's from, and some information about the
14 application.

15 And that's -- all of that information would have
16 to be analyzed by my computer algorithms and used to
17 classify the packet.

18 So every single packet had to get its header
19 analyzed. And -- and it can't fall behind. It has to do
20 it very, very quickly.

21 So as a result, as we found, you get very clear
22 voice, just like on the telephone network, regular
23 telephone network, and web pages populate on your monitor
24 very quickly, no delays, and it works great.

25 Q. Now, there's a reference there to packet-centric

1 scheduler. What is that?

2 A. So in order for the scheduler to do its job, it -- it
3 all focuses on that packet, the packet information. I've
4 got to be able to analyze the packet headers.

5 So that's central to the whole operation of the
6 system. If I can't get access to the packet headers, this
7 system won't work this way.

8 Q. Okay.

9 MR. FLANNERY: Let's go back for a minute to that
10 term ATM.

11 Q. (By Mr. Flannery) Did you consider using the
12 asynchronous mode?

13 A. I did at first. I think I was a little naive, not
14 understanding completely what ATM's limitations were, but I
15 -- I realized that with those pipes, ATM didn't have --
16 didn't see the -- the packet headers.

17 Instead, it produces something called cells, ATM
18 cells. And whatever packets come into one of its pipes, it
19 just chops them up into 53-byte segments, and it doesn't
20 know what's in there.

21 In fact, one packet that's coming in could get
22 chopped into many different cells, or in one cell, you
23 could have contents from two different packets.

24 So I reluctantly said, finally, I can't use ATM.
25 That's not going to be for me. I'm going to have to do

1 something different.

2 MR. FLANNERY: Okay. Let's go to the next slide,
3 please, and talk about some of your ideas.

4 Q. (By Mr. Flannery) So you mentioned earlier this term
5 quality of service. Could you explain that further with
6 reference to this slide.

7 A. Well, again, quality of service is ultimately judged at
8 the end-user -- you know, what the end-user experiences,
9 and carriers want end-users to have good experience, so
10 carriers want to set up the system so that it's providing
11 clear voice and web -- web pages that have all the
12 photographs, all the pictures intact, and video -- YouTube
13 doesn't exactly -- doesn't stutter around. So those are --
14 would be indications that we're doing a good job of
15 providing quality.

16 So we're analyzing the packets, classifying them,
17 and then figuring out the best schedule.

18 So what we do is we say, okay, I've got all of
19 these different types, three or four or five or seven
20 different types of traffic that have to be transmitted, and
21 I know there are constraints for each one. Now, how do I
22 schedule them over the airwaves.

23 So the algorithm -- the computer software program
24 will figure out, okay, these are the things to send right
25 now, but in addition, we're going to also figure out what

1 needs to be sent with the next transmission and the next
2 transmission and the next transmission.

3 So we're doing this -- the algorithm is figuring
4 out things not just now but in the future also about how to
5 send things. And that's what the packet scheduling is all
6 about.

7 Q. And what did you do to maximize bandwidth?

8 A. Well, we maximized bandwidth by packing everything very
9 efficiently.

10 Q. And would that save companies using your ideas lots of
11 money?

12 A. Huge amounts of money. We were thinking that without
13 this, we might have to have a lot of extra bandwidth.

14 And also, our intent was not to send radio waves
15 over an extensive spectrum because we thought maybe our
16 customers would -- wouldn't -- would or would not have to
17 have it.

18 So we're -- we're thinking about unlicensed
19 bandwidth, also, which there wasn't much of.

20 Q. Okay. Did you seek patents for these ideas?

21 A. Yes, I did.

22 MR. FLANNERY: If you could go to the next slide,
23 please.

24 Q. (By Mr. Flannery) And is that the patents that are at
25 issue here PTX-1, 2, and 3?

1 A. Yes.

2 Q. And could you hold those up for the jury?

3 A. Yes.

4 Q. Now, could you please explain to the jury what you did
5 to get those patents?

6 A. Well, I worked for many months. I came up with my
7 design ideas and then worked with a patent attorney to
8 figure out how to boil those ideas down into patent
9 language.

10 And, of course, a patent attorney knows how to do
11 that. So we would take my invention concepts and put them
12 into the patents, and it took a few months. And then we
13 made the applications.

14 Q. Okay. Now, you were a doctor, and then you were
15 awarded these telecommunications patents by the United
16 States Patent Office. How are you able to figure all this
17 out?

18 A. Well, I think in lots of things I do, I'm sort of an
19 outsider, sort of a maverick. I come from the outside.

20 So for the telecommunication stuff, since I was in
21 the library and I was learning from textbooks and from some
22 experts I had talked to, I -- I had a different
23 perspective.

24 I wasn't working for a large corporate entity
25 like -- you know, like AT&T or Ericsson. So I -- I didn't

1 need to follow their conventions about how to solve things
2 or how to use prior things that they'd been working on.

3 I had a fresh start. I didn't have anything. So
4 I just decided, well, what's necessary, and -- and just
5 think about it without being worried about what people
6 expect.

7 MR. FLANNERY: Okay. Let's go to the next slide.

8 Q. (By Mr. Flannery) If you could start to -- sort to
9 wrap up here. If you could tell the jury a little about
10 Malibu as a company.

11 A. So we did develop the wireless point to multi-point
12 system. We built the intelligent base stations and the
13 transceivers, the -- the radios that were used by users.

14 We had over a hundred scientists working on our
15 staff. And we got to the point of building working
16 prototypes.

17 Q. And did you show the prototype to anyone in the
18 industry?

19 A. Yes, we did. We showed -- well, first of all, to our
20 board of directors, and they were very happy. But we -- we
21 also went to a -- an industry trade show in Atlanta in the
22 year 2000 called Supercomm, and there was a big floor --
23 all the engineers go to these shows.

24 They're kind of boring, but -- so we set up our
25 system with the antennas, and we set up workstations with

1 our user stations out on the floor. And we had people make
2 phone calls and access the Internet and do their email.

3 And they were all transmitting from the user
4 stations -- transmitting and receiving from the user
5 stations through our base station. And perfect quality.

6 And so it was great. We felt really great about
7 that grouping.

8 Q. And what was the reaction of some that saw your working
9 model?

10 A. Well, we had some skeptical engineers who came by, and
11 they said -- and they started using it. And they said:
12 This is over wireless? How can you do that? And I had to
13 explain, well, you know, we worked on these algorithms in
14 the -- in the base station that do this, this, and this.

15 And they said: How is that possible? And they
16 seemed skeptical, and I saw them looking at the ground. I
17 said: What are you doing? They said: We're looking for
18 hidden wires. You must be cheating.

19 Q. And did you --

20 A. But I wasn't.

21 Q. -- did you show use of and application of your ideas in
22 any other environment?

23 A. Yeah. Actually for fun, we took one of our user
24 stations and hooked it up to a battery, and we put it into
25 the car of one of my engineers. And we drove around

1 town -- drove around Folsom actually with our base station
2 transmitting, and we could send and receive voice and email
3 and -- and Internet. And it was great.

4 Q. So you showed working of your system in a mobile
5 environment?

6 A. Yes, it was mobile.

7 MR. KUBEHL: Objection, leading.

8 Q. (By Mr. Flannery) Did you meet with any?

9 THE COURT: Wait a minute.

10 MR. FLANNERY: I'm sorry.

11 THE COURT: That's sustained. That's a leading
12 question.

13 MR. FLANNERY: Okay.

14 THE COURT: You need to ask the questions for this
15 witness in a non-leading form.

16 MR. FLANNERY: Okay. I'm sorry, Your Honor. I'll
17 move on. Thank you.

18 THE COURT: Okay.

19 Q. (By Mr. Flannery) Did you meet with any telecom
20 companies about your technology to try to generate interest
21 from Malibu?

22 A. Yes. We met with many, including AT&T and Sprint.

23 Q. And what was the future for Malibu?

24 A. Well, it was looking very good. We were just finishing
25 the prototype phase, and we were looking at how to

1 re-engineer everything for manufacturing.

2 And that's a very costly and lengthy process. So
3 we were prepared to invest a lot of money in manufacturing
4 this in volume. Unfortunately, we never got there.

5 Q. What happened?

6 A. Well, there was something called the dot com telecom
7 prices in 2001/2002. It was nothing to do with us. It was
8 an independent financial event, but, unfortunately, our
9 venture capital -- capitalists, the people who funded our
10 company, kind of got into a panic, and they stopped funding
11 all of their start-ups, not just Malibu. And, oh, my gosh,
12 we had so many employees with no revenue now.

13 So I, unfortunately, had to let everybody go. And
14 we shut the company down a couple years later.

15 Q. And what happened to your patents?

16 A. The investors sold them to Intellectual Ventures.

17 Q. And what do you think about Intellectual Ventures?

18 A. Wow, I was -- I had known about Intellectual Ventures
19 before and what they were doing. I was very excited. I'm
20 very excited about what's going on.

21 As a lone inventor who is not working for a large
22 company, sometimes I feel like our work -- my work is
23 overlooked and undervalued.

24 And with Intellectual Ventures, I see the means
25 to expose the value of these patents and these efforts to

1 the world. So I'm -- I'm really thrilled.

2 Q. And do you get any financial reward if Intellectual
3 Ventures is successful in this litigation?

4 A. No.

5 Q. Have you been -- have you done work for Intellectual
6 Ventures with respect to this case and have you been
7 compensated for your time?

8 A. I've been doing a lot of work in supporting depositions
9 and -- and -- and, of course, that takes a lot of prep
10 time, so I've been compensated on an hourly basis for that
11 time.

12 Q. And what is your compensation rate?

13 A. \$300.00 an hour.

14 Q. Now, were you ever aware of the telecommunications
15 industry using what you considered to be your ideas for
16 high quality service in a packet-centric wireless network?

17 A. No. After Malibu, I was kind of sad and didn't really
18 pay a lot of attention to the telecom world.

19 So I wasn't paying attention, but one day I did
20 start reading about VoLTE. VoLTE. How can they do that
21 without my inventions?

22 Q. Okay. Let's sum up. Just tell the jury a little bit
23 about what you're doing now.

24 A. So I'm semi-retired now. I -- through all of this, I
25 had maintained my medical license, although I don't think

1 I'll go back to practice.

2 But I'm still an inventor, and I'm interested in
3 applying physics to some more medical devices, kind of
4 combine my medical and physics careers. So I have a
5 notebook, and I'm writing down all my ideas.

6 Q. Thank you very much, Dr. Jorgensen.

7 A. Thank you.

8 THE COURT: You pass the witness, counsel?

9 MR. FLANNERY: Yes, Your Honor.

10 THE COURT: All right. Cross-examination by
11 Defendants?

12 MR. KUBEHL: May I approach, Your Honor?

13 THE COURT: Approach the bench.

14 (Bench conference.)

15 MR. KUBEHL: Your Honor, the door has been opened
16 to using the exhibits that talk about his system.

17 He talked extensively about CPE devices, what he
18 thought they were, how his system worked, how it used
19 reservations. The door has been opened, and I do plan to
20 question him on that with Your Honor's permission.

21 THE COURT: Response?

22 MR. FLANNERY: Your Honor, I don't think it's been
23 anywhere near proportional to the level of discussion that
24 Dr. Jorgensen just provided.

25 As you know, they -- they showed that figure from

1 a PowerPoint presentation. That's very detailed. He
2 didn't talk anything about that.

3 He talked very generally. He used certain words
4 just to describe the ideas that he was working on as
5 background, but nowhere near the level of detail.

6 And Your Honor mentioned the -- the presentation
7 should be proportional to his presentation. And I believe
8 that it's not, Your Honor.

9 MR. KUBEHL: Your Honor, with respect to the CPE
10 device, he's made representations to the jury that he was
11 specifically contemplating mobile devices.

12 There are no such documents that support that, and
13 the document that I will show will refute that.

14 With respect to the -- with the diagram he's
15 talking about, I can do my questioning from the patent on
16 that.

17 MR. FLANNERY: I think the patent is not
18 proportional to the level that the witness just described,
19 but I think --

20 THE COURT: Well, the patents are pre-admitted, so
21 there's certainly no problem with you using the patents.

22 MR. KUBEHL: Okay.

23 THE COURT: I'm going to reserve judgment on the
24 other document. Before you finish your cross, if you want
25 to reurge it, you can. But at this point I'm not prepared

1 to grant you leave, all right?

2 Let's go forward.

3 MR. KUBEHL: Thank you.

4 (Bench conference concluded.)

5 THE COURT: Let's proceed with cross-examination.

6 MR. KUBEHL: May I approach the witness with a
7 binder, Your Honor?

8 THE COURT: You may.

9 You may proceed.

10 MR. KUBEHL: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. KUBEHL:

13 Q. Dr. Jorgensen, hello.

14 A. Hello.

15 Q. You're well aware that Ericsson and T-Mobile are being
16 accused of patent infringement in this case, correct?

17 A. Yes.

18 Q. And you understand that Ericsson and T-Mobile have
19 stated that they believe they don't infringe these patents.
20 You understand that?

21 A. Yes, I do.

22 Q. And you understand that Ericsson and T-Mobile have
23 maintained that position through this entire case?

24 A. Okay.

25 Q. Dr. Jorgensen, you talked about your work at a company

1 called EIS?

2 A. That's correct.

3 Q. You said you started that company; is that right?

4 A. Yes.

5 Q. And at EIS, that company that you started, that company
6 was accused of patent infringement, wasn't it?

7 A. Yes, it was.

8 Q. And you believed that they were wrongfully accused,
9 didn't you?

10 A. Yes, I -- I did believe that.

11 Q. And you and your company, EIS, stood up for yourself,
12 didn't you?

13 A. Yes, we did.

14 Q. You defended yourself in court because you believed you
15 were wrongfully accused of patent infringement, right?

16 A. That's correct.

17 Q. And you challenged the validity of the patents, didn't
18 you?

19 A. It's reaching back, but I believe that's probably what
20 we did.

21 Q. In this case, you don't think there's anything wrong at
22 all with Ericsson and T-Mobile standing up for themselves
23 where they think they're being wrongfully accused of patent
24 infringement; is that right?

25 A. No, not at all.

1 Q. You'd agree with me that when your company is accused
2 of patent infringement and you think it's a wrong
3 accusation, the right thing to do is to stand up for
4 yourself, right?

5 A. Sure.

6 Q. Dr. Jorgensen, you don't believe that Ericsson or
7 T-Mobile owe you anything personally for use of your
8 patents, correct?

9 A. No, of course, not.

10 Q. You don't have any basis to believe that T-Mobile's
11 network infringes any claim of your patents, do you?

12 A. It's not for me to decide.

13 Q. Dr. Jorgensen, you don't have any basis to believe that
14 T-Mobile's network infringes any claim of any of your
15 patents in this case; is that right?

16 A. I personally am not in a position to make that
17 judgment.

18 MR. KUBEHL: May I play the impeachment clip, Your
19 Honor?

20 THE COURT: You may proceed to attempt to impeach
21 the witness.

22 MR. KUBEHL: Could we have JJ32, please?

23 (Videoclip played.)

24 QUESTION: You don't have any basis to believe
25 that T-Mobile's network infringes any claim of any of the

1 patents in this case, do you?

2 ANSWER: No.

3 (Videoclip ends.)

4 Q. (By Mr. Kubehl) Dr. Jorgensen, I took your deposition
5 last August, correct?

6 A. Yes.

7 Q. And in that deposition, did I ask that question, and
8 did you give that answer?

9 A. Yes.

10 Q. Dr. Jorgensen, you don't own any interest in any of the
11 patents involved in this lawsuit, correct?

12 A. No, I do not.

13 Q. So this is not a case where IV is suing on your behalf
14 to try to collect any money that you believe you're owed?

15 A. That's correct.

16 Q. IV -- you said how much you admired IV and that they --
17 as I understood, you were telling the jury maybe you
18 thought they were sort of looking out for you and helping
19 you sort of vindicate yourself; is that fair?

20 A. No, that's not correct.

21 Q. Yeah. IV, in this case, is not trying to help
22 you personally reap any personal rewards for your
23 innovations, is it?

24 A. That's correct.

25 Q. In fact, no one at IV had anything to do with any of

1 the inventions in this lawsuit, correct?

2 A. They purchased the inventions.

3 Q. Did anyone at IV have anything to do with conceiving
4 any of the inventions involved in this case?

5 A. I personally was involved in all three of these
6 patents.

7 Q. I'll make sure you heard my question.

8 Did anyone at IV have anything to do with
9 conceiving any of the inventions in this case.

10 A. No.

11 Q. If I -- if IV wins any money in this lawsuit, you won't
12 get any of it, will you?

13 A. That's correct.

14 Q. To the extent that -- withdrawn.

15 Dr. Jorgensen, you're not an expert witness, are
16 you?

17 A. No, I don't believe I am.

18 Q. You're not offering any expert opinions today, are you?

19 A. No, I'm not.

20 Q. You're just a fact witness telling it like it is,
21 aren't you?

22 A. Correct.

23 Q. You're not on anybody's side, are you?

24 A. I'm here to tell the truth.

25 Q. Were you here earlier today when one of our jurors in

1 the pool talked about an experience they had of being a
2 witness to an accident?

3 A. Witness to an accident?

4 Q. Yes, sir.

5 A. No. I'm not -- I'm not recalling that.

6 Q. Okay. Have you ever witnessed, like a car crash or
7 anything like that?

8 A. Personally, yes.

9 Q. And so in that case, let's hypothetically go back to
10 that time, and let's say you -- you see two cars hit each
11 other, and you're the only witness, okay?

12 A. Yes.

13 Q. And let's say that the two folks can't figure out whose
14 fault it was, and a lawsuit starts, right?

15 A. Okay.

16 Q. Okay. You're supposed -- you would -- you'd be --
17 supposed to be an independent fact witness in that case,
18 right?

19 A. Yes.

20 Q. Not on anybody's side, right?

21 A. Correct.

22 Q. But let's say the lawyer for the plaintiff car called
23 you up and -- and said, hey, I bet somebody is going to
24 want to ask you for documents, and they're going to want to
25 take your deposition. How about if I pay you to be your

1 lawyer? Would that sound a little weird to you?

2 A. I'm not sure how to answer that question.

3 Q. Do you think it would be strange at all if you, as an
4 independent fact witness, if the Plaintiff's lawyer called
5 you up and said, hey, I'll be your lawyer for free, and
6 just want to -- just want to get your factual account, but
7 I'll be your lawyer for free?

8 A. It's a hypothetical situation. I'm not sure how to
9 answer that.

10 Q. Okay. Well, let's say the lawyer says, hey, I don't
11 want you working for free here. I'd like to pay you for
12 your time. So like what's your hourly rate? And you say,
13 \$140.00 an hour.

14 But then you think, well, I don't really want to
15 take my time doing this, so if you want my honest fact
16 testimony, you're going to have to pay me double that, more
17 than double that, 300 bucks an hour. Would that sound a
18 little strange?

19 A. No.

20 Q. That'd be okay with you?

21 A. To request more money than was offered the first time?
22 Is that what you're asking?

23 Q. No, no. The -- the lawyers asks you, sir, what's your
24 hourly rate? What would you normally charge? And you tell
25 them, \$140 an hour is my normal rate. That's what I would

1 usually make.

2 But then you yourself decide, aah, if I'm going to
3 get involved in this, if he wants my fact testimony, I'm
4 going to charge you more than double than that. I'm going
5 to say 300 bucks an hour. Would that be right?

6 A. I really don't know how to answer that question. I'm
7 not understanding the context or the situation.

8 Q. So that could be okay?

9 A. It depends.

10 Q. Double your rate just to give the truth?

11 A. No, no. I would -- I'd feel obligated to tell the
12 truth.

13 Q. Yeah. And you wouldn't charge double your rate to do
14 it, would you?

15 A. Again, it's a hypothetical situation. I don't know.

16 Q. Okay. Well, let's say the lawyer says, that's a really
17 good idea. Let's -- let's sign an engagement letter, okay?
18 And he says, don't worry about paying any legal bills.
19 We're going to pay all those for you.

20 Are you with me?

21 A. Okay.

22 Q. And the lawyer says, hey, if the driver of the other
23 car wants to talk to you or wants any of your help, you
24 tell them no. Does that sound okay?

25 A. I don't know what the conventional -- what the

1 requirements of law are in this situation, so --

2 Q. I'm just saying as a human being, just as an ethical
3 human being, do you think that would be okay?

4 A. I'd have to think about it. I don't know. I don't
5 understand the entire context.

6 Q. So -- so far we're up to a lawyer for free, double your
7 hourly rate, and don't help anybody else, and you're not
8 sure if that's okay or not?

9 A. It's a hypothetical situation.

10 Q. But do you know if it's -- if you'd consider it okay if
11 it was you?

12 A. I don't know.

13 Q. Hmm. So that scenario doesn't sound familiar to you at
14 all?

15 A. No, it does not.

16 Q. In this case, IV's lawyers are your lawyers, right?

17 A. I'm not sure what that means, my lawyers.

18 Q. Well, you're personally represented by the Dechert Law
19 Firm, aren't you?

20 A. I don't know. Is that -- whether that's a correct
21 characterization or not.

22 Q. You don't pay the Dechert firm anything, do you?

23 A. No.

24 Q. You have an engagement letter with the -- with IV's
25 lawyers and IV, don't you?

1 A. Yes.

2 MR. KUBEHL: Could we have Defendants' Exhibit
3 129, please?

4 Q. (By Mr. Kubehl) Are we looking at a copy of an August
5 27 -- I'm sorry -- August 17th, 2017 agreement between you
6 and the Dechert Law Firm?

7 A. Yes.

8 Q. And in that agreement, in the first line here, do you
9 agree to testify for them?

10 A. Yes.

11 Q. Now, under testimony, it says that you're not supposed
12 to be for or against anybody; is that right?

13 A. Correct.

14 Q. Was that your idea to put that in there or their idea?

15 A. It was a letter from them, I believe.

16 Q. Hmm. That -- that really isn't the way it worked,
17 though, you not being for or against anybody, right?

18 A. My understanding is that I'm here to speak the truth.
19 Whether that ends up for or against anybody, I don't really
20 understand that.

21 Q. Your agreement with IV includes you having confidential
22 meetings with IV's lawyers where you answer any questions
23 they have about your patents; is that right?

24 A. I'm not sure that's correct. We talked about
25 background information. We talked about what the industry

1 was doing at the time.

2 Q. Was part of your agreement with IV's lawyers that you
3 would agree to answer any questions they had about the
4 patents that list you as an inventor?

5 A. That may be so.

6 Q. It is so, isn't it?

7 A. I don't know.

8 MR. KUBEHL: Could we please have Clip JJ11?

9 Q. (By Mr. Kubehl) In that deposition, did I ask you the
10 question: Part of the work that you've done in this -- in
11 the past for IV has been to answer questions that IV's
12 lawyers have about the patents that list you as an
13 inventor; is that right?

14 And did you answer: Yes?

15 A. Okay.

16 Q. Is that a yes, sir?

17 A. I see it, yes.

18 Q. Another thing you did for them was to search for
19 documents and review those documents, correct?

20 A. That's correct.

21 Q. And then another thing you did with them is to spend
22 time with them making sure you were prepared to give
23 testimony for them, correct?

24 A. Yes.

25 Q. Now, Mr. Jorgensen, in that deposition last August, I

1 asked you: Hey, would you be willing to enter into an
2 agreement with me or my client and give me or the
3 Defendants the same kind of assistance in this case that
4 you're giving to Plaintiff?

5 I asked you that, didn't I?

6 A. Yes, I remember that.

7 Q. What did you say?

8 A. I don't recall my answer.

9 MR. KUBEHL: Could we have Clip JJ14, please?

10 MR. FLANNERY: Your Honor, may I have the courtesy
11 of the page and line number before the video is displayed?

12 THE COURT: You're entitled to that.

13 MR. KUBEHL: Sure. That's from the August 22nd,
14 2018 deposition. It is Page 54, Lines 6 through 10.

15 THE COURT: All right. Proceed with your clip.

16 (Videoclip played.)

17 QUESTION: At least as of today, you're not
18 willing to enter an agreement to give the same assistance
19 to the Defendants that you're giving to the -- to IV; is
20 that right?

21 ANSWER: I would say yes.

22 (Videoclip ends.)

23 Q. (By Mr. Kubehl) Did I ask you that question, and did
24 you give me that answer?

25 A. Yes.

1 Q. That deposition in August was not the first time that
2 you'd been deposed about your patents, correct?

3 A. Correct.

4 Q. You had testified several times before about your
5 patents, correct?

6 A. Yes.

7 Q. So when I took your deposition, you knew the types of
8 questions I'd be asking you about your inventions, right?

9 A. No, not necessarily.

10 Q. Really, through those prior -- those prior depositions,
11 they asked you about your patents, right?

12 A. Yes.

13 Q. And they always asked you about whether you'd read
14 your patents, right?

15 A. I don't remember.

16 Q. They asked you questions about your inventions, didn't
17 they?

18 A. Yes.

19 Q. And you knew I'd be asking those kind of questions,
20 right?

21 A. About the patents in general, yes.

22 Q. In fact, we gave you two months' advanced notice before
23 that deposition before we took it, didn't we?

24 A. I don't remember the amount of time.

25 MR. KUBEHL: The clip I'll show is at the same

1 deposition transcript, Page 30, Lines 22 through 31, Line
2 2.

3 THE COURT: Is this to impeach the answer that he
4 doesn't know? Is that what you're doing?

5 MR. KUBEHL: I thought he said he didn't remember,
6 Your Honor.

7 THE COURT: But this is for impeachment?

8 MR. KUBEHL: This is to refresh recollection.

9 THE COURT: All right.

10 Q. (By Mr. Kubehl) In that deposition, did I ask the
11 question: In the two months or so since we've asked for
12 this deposition, can you tell me what, if anything, you've
13 done to prepare for the deposition?

14 And did you answer: I searched my electronic
15 folders and had conversations with the attorneys at Dechert
16 and met with Dechert this week on Monday and Tuesday?

17 A. Yes.

18 Q. So we gave you about two months' notice before that
19 deposition, didn't we?

20 A. Okay.

21 Q. And in preparing for that deposition, you met with the
22 Dechert attorneys, the same attorneys for IV, right?

23 A. Yes.

24 Q. Now, in your testimony that we heard on your direct
25 examination, you were answering IV's lawyers' questions,

1 and you gave some explanation about what your inventions
2 were, didn't you?

3 A. Yes.

4 Q. In August, I asked you: With respect to your '206
5 patent, one of the ones you've talked about today, if you
6 were asked to tell the jury, Dr. Jorgensen, what's your
7 '206 patent generally about, how would you answer?

8 Do you remember what you said?

9 A. No, I don't.

10 MR. KUBEHL: This is at the same transcript, 226,
11 Line 3, 226, Line 9.

12 (Videoclip played.)

13 QUESTION: With respect to your '206 patent, if
14 you were asked to tell the jury, Dr. Jorgensen, what's
15 your -- what's your '206 patent generally about, how would
16 you answer that question?

17 ANSWER: I would provide the title of the patent
18 as my answer.

19 (Videoclip ends.)

20 Q. (By Mr. Kubehl) And I asked you: Other than reading
21 the title to the jury, could you give them anything else
22 about the patent?

23 And do you remember what you told me?

24 A. No, I don't.

25 MR. KUBEHL: This clip is the same transcript,

1 226, 15, through 19.

2 (Videoclip played.)

3 QUESTION: And other than reading the title to the
4 jury, could you tell them anything else about that patent?

5 ANSWER: No.

6 (Videoclip ends.)

7 Q. (By Mr. Kubehl) I asked you: Dr. Jorgensen, could you
8 tell them anything else about the invention underlying the
9 '206 patent?

10 And do you recall what you said?

11 A. No.

12 MR. KUBEHL: This clip is 226, 20 through 24.

13 (Videoclip played.)

14 QUESTION: Could you tell them anything else about
15 the invention underlying that patent?

16 ANSWER: No.

17 (Videoclip ends.)

18 Q. (By Mr. Kubehl) Did I ask those questions, and did you
19 give those answers?

20 A. Yes.

21 Q. You also talked about your '629 patent today to the
22 jury. When I asked you in August if you were asked to
23 explain to the jury, Dr. Jorgensen, what's your '629 patent
24 about, did you say all you could do is read the title?

25 A. I don't remember.

1 MR. KUBEHL: This clip is the same transcript,
2 224, Line 25, through 225, Line 5.

3 (Videoclip played.)

4 QUESTION: If you were asked to explain to the
5 jury in Marshall, Dr. Jorgensen, what's your '629 patent
6 about, how would you answer that question?

7 ANSWER: In a similar way, I would recite the
8 title.

9 (Videoclip ends.)

10 Q. (By Mr. Kubehl) And when I followed up and asked,
11 could you give them any more information about the '629
12 patent, do you remember what you told me?

13 A. No, I don't.

14 MR. KUBEHL: That clip is 225, 6 through 11.

15 (Videoclip played.)

16 QUESTION: Could you give them any more
17 information than that?

18 ANSWER: Not without the risk of making errors,
19 and that's why I would not want to do that.

20 (Videoclip ends.)

21 Q. (By Mr. Kubehl) And then with respect to the third
22 patent that you talked about to the jury today, this '517
23 patent, I asked you the question: Dr. Jorgensen, what's
24 your '517 patent about? And did you say that all you could
25 do is read the -- read the title and use that as a summary

1 of the subject matter?

2 A. I don't recall.

3 MR. KUBEHL: This clip is 224, 2, through 224,
4 10 -- I'm sorry, 224, 11.

5 (Videoclip played.)

6 QUESTION: So I'm not asking you to tell me
7 exactly what's inside and outside of the patent, but if I
8 just wanted to say, Dr. Jorgensen, your '517 patent, what's
9 that about?

10 (Videoclip ends.)

11 MR. KUBEHL: I'm sorry for interrupting. I
12 thought he had the wrong clip there. Sorry for
13 interrupting.

14 (Videoclip played.)

15 QUESTION: '517?

16 ANSWER: '517. Which one is that? What I could
17 do is read the title and use that as a summary for what the
18 patent subject matter is.

19 (Videoclip ends.)

20 Q. (By Mr. Kubehl) And then, Dr. Jorgensen, when I asked
21 whether you could give the jury any more information about
22 what that '517 patent is about, do you remember what you
23 told me?

24 A. No, I don't.

25 MR. KUBEHL: That clip is 224, 17 through 24.

1 (Videoclip played.)

2 QUESTION: And could you give any more information
3 to the jury about what that patent is about?

4 ANSWER: I --

5 QUESTION: You can answer the question.

6 ANSWER: No.

7 Q. (By Mr. Kubehl) Dr. Jorgensen, did I ask those
8 questions, and did you give those answers with respect to
9 the '517 patent?

10 A. Yes.

11 Q. Dr. Jorgensen, to the extent that you gave testimony on
12 your direct examination today about what your invention
13 was, you weren't trying to suggest to the jury that
14 anything that you said had anything to do with what the
15 patents in this case actually cover, were you?

16 A. No. I described the prototype system, that's correct.

17 Q. Is it your testimony today that you don't know how
18 to -- you don't understand the claims of these patents?

19 A. That's not correct.

20 Q. So in August of this last year, six months ago, when I
21 asked you about each of these three patents and you told me
22 you couldn't do anything but read the title of the patent
23 and then today, suddenly you can say a whole bunch of
24 things to the jury, where -- where did you get all that
25 information?

1 A. As I said before, I was talking about the prototype
2 system.

3 Q. Oh, so you weren't talking about the inventions in the
4 patent; is that right?

5 A. Not directly, no.

6 Q. Not at all, right?

7 A. No.

8 Q. Is that a correct --

9 A. That is correct.

10 Q. And, Dr. Jorgensen, I think you mentioned on direct
11 that IV is paying for your services in this case; is that
12 right?

13 A. That's correct.

14 Q. And for the work you've done for IV, you've charged
15 them between 300 and \$350.00 for every hour that you've
16 spent, right?

17 A. That's correct.

18 Q. And that's for all of the different cases that you've
19 worked on for them, right?

20 A. I believe so.

21 Q. You've done work for IV on cases in every one of the
22 last -- past seven years, haven't you?

23 A. I don't know the answer to that question.

24 Q. You don't dispute that, do you?

25 A. I'd have to go back and look at my records. I don't

1 remember.

2 Q. We'll save some -- save the jury some time on that.

3 Are you representing to the folks on the jury that
4 \$350.00 an hour is the equivalent -- equivalent amount that
5 you make for each hour that you work at your other job?

6 A. I'm retired.

7 Q. In 2016, you were not retired, correct?

8 A. Correct.

9 Q. You were working for the WiFi Alliance, correct?

10 A. Correct.

11 Q. In that job, you worked 40 to 60 hours per week, right?

12 A. That's correct.

13 Q. And you took three weeks vacation, right?

14 A. That's about correct -- about right.

15 Q. And that's about the same thing you did in 2017,
16 correct?

17 A. Approximately.

18 Q. And then the same thing in 2018?

19 A. Yes.

20 Q. So if we took the -- sort of give you the benefit of
21 the doubt, if we take the low end of the hours, only 40
22 hours a week so that that hourly rate gets as high as we
23 can get it, 40 hours a week for the year and taking three
24 weeks off comes out to -- well, I've got to establish --
25 about \$280,000.00 a year is what you were making those

1 years, does that sound about right?

2 A. Approximately.

3 Q. Okay. And if we take that number and we divide it by
4 the number of hours that you were working, if we assume the
5 low end of your 40 to 60 hours per week, that comes out to
6 \$140.00 an hour, doesn't it?

7 A. I trust your calculation.

8 Q. But IV's been paying you 300 to \$350.00 an hour, right?

9 A. That's correct.

10 MR. KUBEHL: Could we bring back up DX-129,
11 please? Could I have Page 2, please, Paragraph 3?

12 Q. (By Mr. Kubehl) So in this engagement letter you have
13 with the IV lawyers, I'm looking at -- about halfway down,
14 it says: You have informed us that a reasonable hourly
15 rate for compensation of your time is \$300.00 an hour.

16 Do you see that?

17 A. Yes, I do.

18 Q. So were you lying to IV when you said that, or did they
19 make it up in the document, or is there some other
20 explanation?

21 MR. FLANNERY: Your Honor, object, argumentative.

22 THE COURT: Sustained. There's no need to go that
23 far with this, counsel. That's across the line, and you
24 know it.

25 MR. KUBEHL: Apologies, Your Honor.

1 THE COURT: Restate your question.

2 Q. (By Mr. Kubehl) Where did the information come from in
3 this document that says your -- your normal reasonable
4 hourly rate is \$300.00 an hour?

5 A. I don't remember.

6 Q. Okay. This was not a situation where the Dechert firm
7 just kind of went off on their own and did this without
8 IV's knowledge, is it?

9 A. I don't believe so.

10 Q. IV specifically approved of this, didn't they?

11 A. I assume.

12 Q. Well, you know they did, didn't -- don't you?

13 A. Okay.

14 Q. Is that a yes?

15 A. That's a yes.

16 Q. If we look at the bottom of the paragraph, do you see
17 that the Dechert firm confirms that it has approval from
18 Intellectual Ventures for making this agreement?

19 A. Yes.

20 Q. So IV specifically approved of paying you \$300.00 an
21 hour and having you agree to testify for them and do all
22 the work that we've talked about, right?

23 A. Yes.

24 Q. And they asked you not to talk to us, right?

25 A. I don't recall.

1 Q. We can see the bottom of the document. That is your
2 signature on the bottom, right?

3 A. Yes, it is.

4 Q. I want to talk to you briefly about your '629 patent,
5 if we can do that.

6 MR. KUBEHL: Could we have Defendants' Exhibit No.
7 1?

8 Q. (By Mr. Kubehl) This is one of the patents that you
9 were telling the jury about; is that right?

10 A. I was not addressing -- no, that's not correct.

11 Q. You didn't show the face of this patent to the jury in
12 your slide?

13 A. This is what I showed.

14 MR. KUBEHL: Let's look at Figure 14.

15 Q. (By Mr. Kubehl) You've seen this figure before,
16 haven't you, sir?

17 A. Yes, I have.

18 Q. It's sort of a complicated looking figure, but if you
19 ignore all of the kind of lines coming down that look like
20 a bird cage and if I just look at the grid that's shown, is
21 it accurate that what this is showing is a series of
22 transmission frames?

23 A. It appears so, yes.

24 Q. And so maybe we can put a highlight on the top one that
25 says "N" going across the top row?

1 A. Yes.

2 Q. So in your patent, that was -- that's -- that's called
3 a transmission frame, correct?

4 A. Yes.

5 Q. And the letter "N" represented the current transmission
6 frame, right?

7 A. Yes.

8 Q. And that would be the transmission frame that the next
9 allocation of resources would go to, right?

10 A. The next or the present, yes, I agree.

11 Q. And then below that, it says in $N + 1$. Do you see
12 that?

13 A. Yes.

14 Q. And so the idea here is that $N + 1$ is a frame that's
15 out into the future, compared to Frame N; is that right?

16 A. Yes.

17 Q. So the top row is one transmission frame, and
18 information can be put into that and sent wirelessly,
19 right?

20 A. Yes.

21 Q. And then the next frame, that hasn't happened yet, that
22 will be coming in the future, right?

23 A. Correct.

24 Q. And then Frame $N + 2$, that would be what you called a
25 frame that's subsequent in time to the future Frame $N + 1$;

1 is that right?

2 A. Correct.

3 MR. FLANNERY: Objection, may we approach?

4 THE COURT: Approach the bench.

5 (Bench conference.)

6 MR. FLANNERY: Your Honor, this goes directly to
7 the meaning of claim terms, not -- not to plain and
8 ordinary meaning. He's trying to get the inventor to
9 construe claim terms.

10 MR. KUBEHL: These are non-construed terms. These
11 are plain and ordinary meaning terms.

12 MR. FLANNERY: No, Your Honor. He's not asking
13 him what was the plain and ordinary meaning. He's trying
14 to take him through the embodiment and ask him to interpret
15 the claims that Your Honor has already interpreted.

16 THE COURT: Well, I gather -- and correct me if
17 I'm wrong -- but this is not an attempt to have the witness
18 give a different opinion as to the meaning or construction
19 of terms the Court has explicitly construed, correct?

20 MR. KUBEHL: Absolutely it's not.

21 MR. FLANNERY: I don't think he has -- I don't
22 think he has any basis for testifying about these things.
23 I didn't ask him anything about this on direct. He hasn't
24 studied the patent --

25 THE COURT: Okay. That's a different matter,

1 Mr. --

2 MR. FLANNERY: -- things that experts --

3 THE COURT: -- that's a different matter,

4 Mr. Flannery.

5 My question to you is: Are you telling me that
6 defense counsel is asking the witness to construe terms the
7 Court has interpreted?

8 MR. FLANNERY: I don't know what he's going to do.
9 But all I know is he's getting into areas of claim
10 construction and the application -- the application.

11 THE COURT: Well, Mr. Kubehl, plain and ordinary
12 meaning is a person of ordinary skill in the art, and
13 inventors are not an ordinary -- person of ordinary skill
14 in the art. This is the inventor here. It's not
15 appropriate to get him to go into plain and ordinary
16 meaning because he is not a POSITA.

17 And you are beyond the scope of the direct.

18 So tell me where you're headed so I'll know if
19 it's permissible.

20 MR. KUBEHL: I want to explore what he said on
21 direct about his invention. I can leave this figure. But
22 I want to --

23 THE COURT: As long as you're exploring with him
24 what he -- what he discussed on direct, I have no problem
25 with that, but he's not -- he's not an expert. He's not to

1 attempt to opine on any term the Court has construed. And
2 he's not a person of ordinary skill in the art. So he's
3 not in a position to testify as to what plain and ordinary
4 meaning would be, all right?

5 MR. KUBEHL: Understood. As far as the -- within
6 the scope of direct, we specifically have an agreement so
7 that we didn't have to recall him in our case, that we
8 could exceed the scope of direct.

9 THE COURT: Is that correct, Mr. Flannery?

10 MR. FLANNERY: I don't recall that. But I don't
11 think it's about the scope of direct. I think it's about
12 just going into things that aren't proportional to the
13 direct. He's asking him about plain and ordinary meaning
14 of claim terms. He's asking him about --

15 THE COURT: Just a minute. Just a minute. If --
16 if you have an agreement to exceed the scope of the direct,
17 you need to tell me. Otherwise, I'll hold the
18 cross-examination to the scope of the direct.

19 But in either case, I'm telling defense counsel
20 he's not to question this witness about plain and ordinary
21 meaning because this is the inventor. He's not a person of
22 ordinary skill, all right?

23 MR. FLANNERY: Yes. I think that's the way we
24 should proceed, Your Honor.

25 THE COURT: Let's go forward.

1 (Bench conference concluded.)

2 THE COURT: Let's proceed.

3 Q. (By Mr. Kubehl) Okay. Let's move on from that figure.

4 Dr. Jorgensen, in your system, you talked about
5 how you wanted to put voice and data on the same channel,
6 right?

7 A. Yes.

8 Q. You also talked about how voice needed to be at these
9 regular intervals; is that right?

10 A. Correct.

11 Q. And in your -- in your idea, was it your idea that
12 rather than waiting until you have a packet that's just
13 about to be transmitted, that you'd look out into the
14 future, and you'd reserve spots in the frames multiple
15 frames out, instead of just waiting until you have the data
16 to send?

17 A. Not exactly.

18 MR. KUBEHL: Could we have Clip JJ42, please?

19 MR. FLANNERY: Your Honor, may I have the page and
20 line once again?

21 MR. KUBEHL: I'm sorry. 193, 1, through 193, 6
22 from the same transcript.

23 (Videoclip played.)

24 Q. So rather than waiting until you have A packet just
25 about to be transmitted, you'll look out into the future,

1 and you'll reserve spots in the frames, multiple frames
2 out, instead of just waiting until you have data to send?

3 A. That's roughly what I'm saying, yes.

4 (Videoclip ends.)

5 Q. (By Mr. Kubehl) Now, Dr. Jorgensen, rather than
6 reserving slots in future frames, a different way to design
7 the system would have been to keep track of when that
8 device was likely to need a packet and to elevate the
9 priority of the device when it needed that packet; is that
10 fair?

11 A. I don't know.

12 MR. KUBEHL: Could we have clip JJ43. It's at
13 250, 23, to 251, 9.

14 (Videoclip played.)

15 Q. So without asking you to draw conclusions as to which
16 is better or worse, would you agree that at least as an
17 alternative to the way you designed it, which was reserving
18 future slots, an alternative would be to keep track of when
19 a device was likely to need a packet and to elevate the
20 priority of that device when it needed a packet?

21 A. It's a -- I guess it's a -- it sounds like a different
22 way to do it.

23 There are probably a dozen other ways to do it
24 also. I don't know. I haven't thought about it in 20
25 years.

1 (Videoclip ends.)

2 Q. (By Mr. Kubehl) Dr. Jorgensen, by the time you were at
3 Malibu, there were already systems in the industry called
4 TDMA systems that would assign devices particular time
5 slots in each frame, correct?

6 A. That's correct.

7 Q. So systems were well-known at that time, were they?

8 A. Would you repeat the question, please? I didn't hear
9 you.

10 Q. Were those systems well-known at that time?

11 A. I can't say.

12 Q. You gave the jury some testimony about CPE devices.
13 When -- before we took your deposition in this case, we
14 asked you -- we sent a subpoena to you, a Court order, for
15 you to produce documents, correct?

16 A. Yes.

17 Q. And you did a full search for any documents you could
18 find related to your invention, right?

19 A. Yes.

20 Q. And you produced those documents, right?

21 A. Correct.

22 Q. And you didn't show the jury a single document today
23 showing that what you meant by CPE device was actually a
24 mobile phone; is that right?

25 A. I didn't show the jury a single -- could you repeat

1 that, please?

2 Q. Sure. You talked about how you thought CPE devices
3 back in the day that you had envisioned mobile devices, but
4 it's true, isn't it, that you didn't show the jury a single
5 document to back that up?

6 A. That's correct.

7 MR. KUBEHL: I'd like to use the CPE document if I
8 may.

9 THE COURT: Approach the bench.

10 (Bench conference.)

11 THE COURT: What's your request?

12 MR. KUBEHL: This document will simply be used to
13 show that the only document he produced to us is a CPE that
14 is a -- bolted to a house device. It contradicts his --
15 his direct testimony that he was using it with mobile
16 devices.

17 MR. FLANNERY: I don't think he testified that he
18 was using it with multiple devices, Your Honor.

19 He testified that he made a prototype. I don't
20 want to -- if the document has anything to do with defining
21 claim --

22 THE COURT: He testified he put the base station
23 in a car with a battery, and they drove around, and it
24 worked remotely from the automobile.

25 Here's my concern, Mr. Kubehl. I don't want this

1 prototype used as some embodiment at which you're then
2 going to say he's -- you know, I don't want an improper
3 comparison to a prototype, and that's what I'm worried
4 about.

5 MR. FLANNERY: That's exactly what they're doing,
6 Your Honor.

7 THE COURT: So tell me again how you intend to use
8 it.

9 MR. KUBEHL: We will not be making a comparison of
10 that to -- to our products. I want to show that the
11 document that he produced contradicts his testimony that he
12 was using it with mobile devices.

13 MR. FLANNERY: He's comparing to -- he's not
14 comparing it to their product, Your Honor --

15 THE COURT: Just a minute, gentlemen. One at a
16 time.

17 MR. FLANNERY: He's comparing -- he's pairing it
18 to a preferred embodiment, and he's trying to draw and say
19 you didn't do -- you didn't describe mobile environment in
20 your -- in this document or whatever.

21 That all goes to claim construction, Your Honor.
22 And he's trying to compare something to either a preferred
23 embodiment or the prototype that he worked on. And all of
24 this is improper under the MILs. It's all comparisons.

25 MR. KUBEHL: We can check the transcript. He

1 testified that he was -- that CPE device included mobile
2 devices. He specifically testified to that, and this
3 document contradicts that. It's -- it's all he's produced.
4 He's not produced any document showing any mobile devices.

5 MR. FLANNERY: He described --

6 THE COURT: All right. Hang on. I'll allow you,
7 Mr. Kubehl, to refresh him as to that testimony.

8 And you can certainly ask him if the documents he
9 produced did not support mobile usage. And if he disagrees
10 with that, then I'll let you impeach him with this
11 document, but only for that sole purpose.

12 MR. KUBEHL: I understand.

13 THE COURT: All right?

14 MR. KUBEHL: Thank you, Your Honor.

15 MR. FLANNERY: Thank you, Your Honor.

16 THE COURT: Let's proceed.

17 (Bench conference concluded.)

18 THE COURT: Let's proceed.

19 Q. (By Mr. Kubehl) Dr. Jorgensen, would you agree that
20 the documents you produced in response to our subpoena do
21 not support the idea that a CPE device was a mobile device?

22 A. I don't know.

23 MR. KUBEHL: May I refresh his recollection?

24 THE COURT: Yes.

25 MR. KUBEHL: Can we have Exhibit DX-137.

1 Q. (By Mr. Kubehl) This is one of the documents you
2 produced, correct?

3 A. It was a document that my company produced.

4 Q. This is one of the documents that you produced in
5 response to my subpoena, sir, was it?

6 A. My mistake. Yes.

7 Q. Thank you, sir.

8 MR. KUBEHL: If we go to the next page, please.
9 If we can blow up the lower quarter. There we go.

10 Q. (By Mr. Kubehl) On this page, it talks about the
11 Malibu Networks' solution that it would be a complete
12 system of wireless broadband products, including all the
13 wireless equipment and software the operator would need; is
14 that right?

15 A. Yes.

16 MR. KUBEHL: Then if we go to the next page.
17 Let's go to Jorgensen 31, please.

18 THE COURT: Counsel, I gave you leave to refresh
19 his recollection. You're going beyond that now.

20 MR. KUBEHL: This is the last question.

21 THE COURT: Ask your question.

22 MR. KUBEHL: Thank you, Your Honor.

23 Q. (By Mr. Kubehl) Dr. Jorgensen, how is the CPE device
24 described in this document that you produced?

25 A. I'm sorry, I don't understand your question. Do you

1 want me to --

2 Q. Would you read it, please?

3 A. A CP -- it's hard to read it, I'm sorry. A CPE
4 customer premises equipment with something --

5 Q. Would you like me to read it, sir?

6 A. I can't read that last word on the first line.

7 Q. A CPE, customer premises equipment, with two
8 components. The IDU is a small enclosure that sits on a
9 desk, in a rack, or on a wall, and includes the connections
10 to the subscriber's PC, LAN switch, IP telephone, and so
11 on.

12 Did I get that right so far?

13 A. Yes.

14 Q. The second part would be this ODU mounted on the side
15 of a building and includes the radio and antenna.

16 Did I read that right?

17 A. Yes, you did.

18 Q. Thank you, sir.

19 THE COURT: Let's move on.

20 Q. (By Mr. Kubehl) Dr. Jorgensen, did you use the term
21 packet-centric? Is that a term that you created for your
22 invention to describe a protocol for packet switching based
23 on QoS characteristics?

24 A. It's a phrase I used.

25 Q. Is it a -- is it a term that you created for your

1 invention to describe a protocol for packet switching based
2 on QoS characteristics?

3 A. I -- yes.

4 Q. And, Dr. Jorgensen, have you in the past described the
5 term packet as it's used in your Malibu patents as a small
6 unit of information that has two parts, one is actual
7 payload, the actual data that's being sent, the other part
8 at the top is called a header, which describes some details
9 about the data that's in the payload?

10 MR. FLANNERY: Your Honor, objection. May we
11 approach.

12 THE COURT: Approach the bench, counsel.

13 (Bench conference.)

14 MR. FLANNERY: Your Honor, again, this is going
15 into plain and ordinary meaning of claim terms.

16 MR. KUBEHL: He has specifically testified on
17 direct about packets and how he used packets and headers of
18 packets. He has -- he has discussed in depth packets.

19 This is prior testimony about he has -- how he has
20 explained in federal court what a packet is.

21 MR. FLANNERY: And he referred to what he did, but
22 now, he's going to ask him in the context of his patents
23 and his patent claims.

24 MR. BLACK: I'm sorry, Your Honor. Packet-centric
25 is a claim term. Mr. Kubehl is asking him whether he

1 defined the term which isn't for the Court to do -- or the
2 experts in this case and not for this witness. He's way --

3 MR. KUBEHL: He's given testimony in federal court
4 about patents in the same family with the same
5 specification about what -- what the packet is.

6 THE COURT: Well, I made it clear earlier at the
7 bench, this is not a person of ordinary skill in the art.

8 He's not in a position to testify about plain and
9 ordinary meaning. And if it's a term this Court has
10 expressly construed, then it's totally off bounds for him
11 to try and construe it or define it.

12 MR. KUBEHL: This is not a construed term.

13 MR. FLANNERY: It's plain and ordinary meaning.

14 THE COURT: It's one or the other though.

15 MR. KUBEHL: I understand.

16 MR. BLACK: It's inventor testimony.

17 THE COURT: We need to move on, all right?

18 MR. KUBEHL: Yes, sir.

19 (Bench conference concluded.)

20 THE COURT: Let's move on.

21 MR. KUBEHL: Yes, Your Honor.

22 Q. (By Mr. Kubehl) Dr. Jorgensen, did you spend seven
23 years at a company call Velocity Venture Capital?

24 A. Six or seven years, yes.

25 Q. And as part of your responsibilities there, did it

1 involve evaluating patents for new start-ups?

2 A. No.

3 Q. Dr. Jorgensen, you didn't invent the concept of
4 bandwidth allocation; is that right?

5 A. No, I did not.

6 Q. Before any of your inventions, there was a system
7 called PRMA; is that right?

8 A. I don't know what that refers to.

9 Q. By 1997, was there a company called Packeteer that had
10 a product that was classifying individual IP-flows based on
11 quality of service of the flow?

12 A. Yes, I remember.

13 Q. And they were selling that product by February 1997; is
14 that right?

15 A. I don't remember the date.

16 MR. KUBEHL: This is from the same transcript,
17 266, 17 through 21.

18 Q. (By Mr. Kubehl) Dr. Jorgensen, does that refresh your
19 recollection that Packeteer was selling that system you
20 described by February of 1997?

21 A. Yes.

22 Q. That was before you started at Malibu, right?

23 A. That's correct.

24 Q. You didn't start at Malibu until January 1998, right?

25 A. Correct.

1 Q. And that was before you'd even started thinking about
2 the technology you developed at Malibu, right?

3 A. No, I'm not sure that's correct. Part of -- it's more
4 complicated than that.

5 Q. Before you worked at Malibu, did you work at a company
6 called Pacific Access?

7 A. Yes.

8 Q. And is it accurate that you didn't start thinking about
9 the issues that resulted in the Malibu Networks technology
10 until after you had already left Pacific Access?

11 A. That's correct.

12 Q. And you left Pacific Access in 1998?

13 A. That's probably right, yes.

14 MR. KUBEHL: Pass the witness, Your Honor -- oh,
15 I -- one more issue if I can -- may retract.

16 THE COURT: All right.

17 MR. KUBEHL: I apologize.

18 THE COURT: Ask your next question.

19 MR. KUBEHL: Yes, sir.

20 Could we have DX-55, please?

21 Q. (By Mr. Kubehl) Dr. Jorgensen, DX-55 appears to be a
22 PCT application of -- of the '206 patent family. Does that
23 look right to you?

24 A. Yes.

25 Q. And did you believe that the -- the claims in the '206

1 patent -- when they were filed, did you believe that each
2 and every element of those claims was disclosed by the
3 original patent application?

4 A. By this patent application?

5 Q. By the '206 patent's patent application?

6 A. I'm sorry, could you repeat the question?

7 Q. Sure.

8 A. I'm not sure I understood that.

9 Q. Sure. Sorry, sir. If we went back to the '206 patent
10 when that was filed, did you believe that the claims of the
11 '206 patent, that those are fully supported, each and every
12 element by the written description of that patent?

13 MR. FLANNERY: Your Honor, may we approach again?

14 A. I don't really understand.

15 THE COURT: Just -- just a minute, Dr. Jorgensen.

16 What is it, Mr. Flannery?

17 MR. FLANNERY: I have an objection. May we
18 approach again?

19 THE COURT: State your objection.

20 MR. FLANNERY: He's asking Dr. Jorgensen --

21 THE COURT: If not, we're going to wear out the
22 carpet between counsel table and the bench.

23 MR. FLANNERY: I'm trying, Your Honor.

24 But he's asking Dr. Jorgensen to basically provide
25 interpretation of patent claims and whether they're covered

1 by a specification, which is clearly the subject of expert
2 testimony.

3 THE COURT: Do you have a response, Mr. Kubehl?

4 MR. KUBEHL: I'll move on.

5 THE COURT: Let's move on. Or I'll sustain the
6 objection, one of the two. And you passed the witness.

7 I thought you were coming back for one question.
8 Do you have more than that?

9 MR. KUBEHL: I did have two more, but I'll --

10 THE COURT: I just didn't know what the scope of
11 your retraction was.

12 Two more questions. Let's go.

13 Q. (By Mr. Kubehl) Dr. Jorgensen, is it accurate that
14 you're not an expert in LTE?

15 A. That's correct.

16 Q. It's accurate that you have very little knowledge about
17 how LTE works?

18 A. That's correct.

19 Q. And that you have very little knowledge about how base
20 stations in LTE work?

21 A. That's correct.

22 Q. Okay.

23 MR. KUBEHL: Pass the witness, Your Honor.

24 THE COURT: All right. Redirect.

25 REDIRECT EXAMINATION

1 BY MR. FLANNERY:

2 Q. Dr. Jorgensen, on direct, we talked about -- you told a
3 story of how you developed your inventions. Did we discuss
4 any particular patent claims compared to the '206 versus
5 the '629 versus the '517 patent?

6 A. No.

7 Q. Okay. Now, you were asked some questions and shown
8 some of your video deposition about whether you understood
9 what was in any particular patent, one versus the other
10 versus the other.

11 Now, you're not a patent lawyer, right?

12 A. Of course not.

13 Q. And you weren't asked to interpret the patent claims or
14 provide any expert analysis of the patent claims in this
15 case, right?

16 A. No.

17 Q. Okay. Now, when you were being asked questions about,
18 well, what's the difference between the invention, can you
19 explain the invention in the '206 versus the invention in
20 the '517 versus the invention in the '629? Were you not
21 able to explain the differences of those because you
22 thought you were talking about the patent? The questions
23 were going to --

24 THE COURT: Slow down, Mr. Flannery.

25 MR. FLANNERY: I'm sorry, Your Honor. I've been

1 waiting to get to this for a while.

2 THE COURT: You can do it, just talk slowly.

3 MR. FLANNERY: Thank you, Your Honor.

4 Q. (By Mr. Flannery) Was it -- so you were being asked
5 these questions about, well, do you know what that
6 invention is, do you know what that invention is, and the
7 reason you couldn't provide the difference between those
8 inventions is because you didn't study the claims, one
9 invention -- one -- one patent compared to the other
10 compared to the other?

11 THE COURT: Mr. Kubehl.

12 MR. KUBEHL: Objection, leading.

13 THE COURT: Sustained.

14 Q. (By Mr. Flannery) Could you explain why you weren't
15 able to provide significant detail as to the invention of
16 the '206 versus the '517 versus the '629 patents?

17 A. As an inventor, I spend my time and energy focusing on
18 creating new ideas. What I am not an expert in is
19 translating those new ideas into specific language, and the
20 writing of the language and the interpretation of that
21 language I now understand is very technical, is very --
22 it's a very specific kind of knowledge that one needs to be
23 trained for that I am not trained for. And I am afraid of
24 misrepresenting the contents of the patents by making
25 statements about what they are.

1 Q. And when you -- you're referring to the patent claims,
2 you're not an expert in drafting patent claims?

3 A. That's what I mean.

4 Q. Okay. Thank you.

5 Now, counsel gave you a book. Can you just flip
6 through that? Does most of that look like it's depositions
7 that you've given in this case towards the back end?

8 A. Yes.

9 Q. So essentially, from here on back, this is
10 double-sided, and this is recording all of your testimony?

11 A. Yes.

12 Q. And was this all testimony where you felt that lawyers
13 for opponents of your patents were essentially trying to
14 say that your patents were worthless?

15 MR. KUBEHL: Objection, leading.

16 THE COURT: Sustained.

17 MR. FLANNERY: I'll withdraw, Your Honor.

18 THE COURT: Ask your next question.

19 MR. FLANNERY: Okay. Thank you.

20 Q. (By Mr. Flannery) You're -- you were asked questions
21 about whether you know if the -- Ericsson or T-Mobile's
22 technology here infringes your patents. Do you remember
23 that?

24 A. Yes.

25 Q. And you didn't have any -- you didn't do any analysis

1 of that, right?

2 A. No.

3 Q. But you didn't have any access to any confidential
4 information from either T-Mobile or Ericsson, right?

5 MR. KUBEHL: Objection, leading.

6 THE COURT: Sustained.

7 Q. (By Mr. Flannery) Did you have access to confidential
8 information of Ericsson or T-Mobile?

9 A. No.

10 Q. And were you asked to provide any expert analysis of
11 any device of T-Mobile or Ericsson in this -- in any
12 context?

13 A. No.

14 Q. Now, you testified that you heard -- when you heard
15 about VoLTE, you wondered how they could do this without
16 your patents. And why did you think that?

17 A. Because I knew that sending voice and data over one
18 wireless channel is a very challenging thing, and I knew
19 that from my own work. And I thought that my solution was
20 the one that was required.

21 MR. FLANNERY: Nothing further, Your Honor. Pass
22 the witness.

23 THE COURT: Further cross-examination.

24 MR. KUBEHL: Just briefly, Your Honor. May I
25 proceed?

1 THE COURT: You may.

2 RE CROSS-EXAMINATION

3 BY MR. KUBEHL:

4 Q. Dr. Jorgensen, that -- like about that much testimony,
5 that was all you working with IV's lawyers; is that right?

6 A. I'm not sure what you're indicating.

7 Q. He showed you like that thick of testimony of
8 testimony -- testimony you had given about patents, patent
9 cases, prior litigations. That was all you working with
10 IV's lawyers?

11 A. I see, yes.

12 Q. And is it your testimony today that you don't
13 understand the claims in your patent?

14 A. That is oversimplified.

15 Q. Have you represented to the United States Patent Office
16 that you've fully read and understood the claims in each of
17 these three patents?

18 A. Yes.

19 MR. KUBEHL: Nothing further.

20 THE COURT: Redirect?

21 MR. FLANNERY: Nothing, Your Honor.

22 THE COURT: All right. You may step down,
23 Dr. Jorgensen.

24 THE WITNESS: Thank you.

25 MR. FLANNERY: Your Honor, may Dr. Jorgensen be

1 excused from the rule?

2 THE COURT: Is there a need to retain this
3 witness?

4 MR. KUBEHL: No, Your Honor.

5 THE COURT: Dr. Jorgensen, you are released and
6 excused. You're free to stay with us. You're also free to
7 leave.

8 THE WITNESS: Thank you.

9 THE COURT: Counsel, approach the bench, please.
10 (Bench conference.)

11 THE COURT: Y'all know what I'm going to ask.
12 Who's next and how long are they going to take?

13 MR. BLACK: John Paschke for IV. It's probably
14 30, 40 minutes on direct.

15 THE COURT: All right.

16 MR. BLACK: A long cross?

17 MS. SMITH: Possibly.

18 THE COURT: You're going to cross him, Ms. Smith?

19 MS. SMITH: Yes, sir.

20 THE COURT: Well, let's see if we can't at least
21 get the direct done.

22 Let's proceed.

23 MR. BLACK: Your Honor, can I raise one issue?

24 Mr. Kubehl asked a question of the witness about
25 seven years of depositions making -- trying -- he's talking

1 about prior lawsuits. And for us to -- going back into on
2 redirect on that appropriately would have led us down the
3 rabbit hole into the other lawsuits.

4 The fact is his firm and other firms and his
5 client and prior clients have been deposing and trying to
6 kill Dr. Jorgensen's patents for years. For us to get into
7 that, though, we would have had to break the rule and
8 explain these other lawsuits, and we've got to keep a lid
9 on this. I think Mr. Kubehl crossed the line, and we've
10 got to keep a lid on it.

11 THE COURT: Well, I may be mistaken, but my
12 recollection of the limine rulings is we're not to talk
13 about other litigation. And there were very clear and
14 direct efforts by Defendant to lead the jury to the
15 conclusion that this is just one of multiple lawsuits.

16 MR. KUBEHL: Your Honor, I responded -- my
17 response was to Mr. Flannery's question holding up the
18 document and about all the litigations there have been and
19 all the testimony --

20 THE COURT: Well, Mr. Kubehl, in all honestly,
21 that was just one of several times you did it. And we're
22 going to have to -- we're going to have to go forward
23 recognizing that limine ruling, or else I'm going to have
24 to make some accommodation to the other side to cure it
25 without putting themselves in a damaged position.

1 Let me just be clear, without leave of the Court,
2 I don't want anybody on either side to be talking about or
3 implying anything about other lawsuits in other litigation
4 in other places at other times. If you're going to do
5 that, whether it's a direct question or a thinly-veiled
6 implication, which is what we just saw, you better come get
7 leave from me before you do it, all right?

8 MR. KUBEHL: Yes, Your Honor.

9 MR. BLACK: Yes, Your Honor.

10 THE COURT: All right. Let's proceed with the
11 witness.

12 (Bench conference concluded.)

13 THE COURT: All right. Plaintiffs, call your next
14 witness.

15 MR. BLACK: Plaintiffs call John Paschke.

16 THE COURT: Is he subject -- come forward, please,
17 sir.

18 (Witness sworn.)

19 THE COURT: Please come around, sir, have a seat
20 on the witness stand.

21 All right. Let's proceed with direct examination.

22 MR. BLACK: Thank you, Your Honor.

23 JOHN PASCHKE, PLAINTIFF'S WITNESS, SWORN

24 DIRECT EXAMINATION

25 BY MR. BLACK:

1 Q. Would you please state your full name for the record?

2 A. Yes. John Frederick Paschke.

3 Q. And where are you employed, Mr. Paschke?

4 A. I'm employed -- I'm employed at Intellectual Ventures
5 through the company Intellectual Ventures Management.

6 Q. Have you ever testified to a jury before?

7 A. No, I have not.

8 Q. All right. Well, if you can remember to do so, please
9 try to look over at the jury when you're answering the
10 questions and not over at me. They want to hear from you.

11 What's the relationship between Intellectual
12 Ventures Management and the Plaintiff in this case,
13 Intellectual Ventures I LLC?

14 A. Intellectual Ventures is actually a family of
15 companies, family of funds. And my company, Intellectual
16 Ventures Management, provides management services for all
17 of the companies within Intellectual Ventures.

18 Q. And what specifically is your position? What do you do
19 for them?

20 A. My -- my position is called licensing executive,
21 perhaps a fancy way of saying I'm a salesman. What I sell
22 is a very technical product called a patent license. I fly
23 all around the world talking with different companies and
24 seeing whether they want to take a license to the
25 inventions covered by our patents.

1 Q. Give us a little information about yourself. Where are
2 you from?

3 A. From Boise, Idaho. I live there with my wife and four
4 children.

5 Q. Do you have any scientific training?

6 A. I do. I have an engineering degree from the University
7 of Illinois.

8 Q. And tell us how you first became interested in
9 engineering.

10 A. So I'm from a small town in Northwestern Illinois,
11 Mount Carroll. It has about 1,400 people. It's farm
12 country. My parents own the local lumberyard and hardware
13 store. It's a family business. Over the summers, as I was
14 a teenager, I would load lumber, make deliveries, and then
15 help my mom out every month as she would send out
16 statements. It was a manual process. She would have to
17 literally handwrite these statements, and it'd take a
18 couple of days.

19 One -- one day I said, you know, maybe I can help
20 you out. And so I wrote a database program that automated
21 the whole system and shaved a whole bunch of time off of
22 it. That planted the seed for engineering and technology
23 and eventually led me to college.

24 Q. Now, when you entered the University of
25 Illinois, did you expect to go to school and train

1 to become a licensing executive?

2 A. No, no. My ambitions were much similar going to the
3 University of Illinois. Survival, quite honestly. Neither
4 of my parents had graduated from college, and so I was
5 going there.

6 The first class I entered had over 1400 people, so
7 it was -- my class was bigger than my entire town. And I
8 was just hoping -- straight Ds, I could not face my parents
9 going back and flunking out of a university.

10 Q. It turned out okay. What happened next?

11 A. It did. It did. I studied extremely hard. Managed to
12 graduate with straight As and a number of engineering
13 awards. That took me on to law school at Harvard.

14 Q. Did you spend any time practicing law after you left
15 law school?

16 A. For a short time I did. I spent a couple of years at a
17 law firm in Chicago. We did a case -- a patent
18 infringement case for a company called Micron Technology.
19 Micron is a memory chip company located in Boise, Idaho.

20 At the end of the case, they gave me an offer to
21 come work for them in-house and moved the family and headed
22 out to Boise, Idaho.

23 Q. Now, what kind of technology company is located in
24 Boise, Idaho?

25 A. Yeah. Boise -- I don't know if people know where Boise

1 is, but it's in the middle of nowhere. It's a small city
2 now at this point.

3 Micron, though, is the one of the most
4 cutting-edge technologies on the planet. It makes computer
5 memory chips, and the technology to make those chips so
6 small and to pack so much information is just incredible.

7 Q. And how did you become a licensing executive?

8 A. So at Micron, I started out working in the legal
9 department and helping with patent litigations.

10 Eventually, my interests turned towards licensing.
11 Because of all the technology that Micron developed, they
12 had a huge patent portfolio and some incredibly smart
13 engineers.

14 The problem was every time Micron engineers would
15 develop a new product, foreign competitors would take those
16 ideas. Micron -- I say foreign because Micron was the last
17 remaining DRAM manufacturer. All others had gone out of
18 business. Last computer memory chip manufacturer.

19 And this was frustrating to me because these
20 engineers were coming up with great ideas.

21 I went to management, and I -- Micron management,
22 and I asked them if I could try to take our patents and our
23 inventions and instead try something different.

24 Go overseas and talk with these companies, and see
25 if I could convince them to take a license to our

1 technology as opposed to just putting it in their products.

2 Q. And how did that work out?

3 A. It worked out great. I was able to license Micron's
4 patent portfolio out to a number of companies for over
5 \$500 million.

6 This money just dropped straight to the bottom
7 line at Micron, and the -- the margins in the memory
8 industry are so incredibly competitive, that this was an
9 advantage to Micron for doing this.

10 Q. When did you first start work for Intellectual
11 Ventures?

12 A. Shortly after some of this licensing success, I had a
13 friend from law school, and he was at Intellectual
14 Ventures.

15 He knew -- we keep in contact, and he knew that I
16 was doing licensing at Micron. He indicated that IV itself
17 had a very large patent portfolio, and they were interested
18 in licensing that technology.

19 So he invited me in. It became a series of
20 interviews, and eventually I decided to join up at IV.

21 Q. And during the course of the last almost eight years at
22 IV, how many licenses have you negotiated?

23 A. At IV, I've negotiated over 30 licenses to conclusion
24 all across the world.

25 Q. Is there a relationship between licensing and

1 litigation?

2 A. There -- there is, or at least there can be. In an
3 ideal world, you go and you try negotiate a license, and
4 like at Micron, sometimes you are successful in achieving a
5 license from the other side without litigation.

6 Sometimes, though, you feel strongly in your
7 inventions, and the other side is unwilling to take a
8 license. At that point in time, litigation is -- is often
9 the only option you have.

10 Q. Who are some of the other parties that you've
11 negotiated licenses with?

12 A. I've negotiated licenses with companies like Samsung.

13 In the digital camera space, companies like Canon
14 or Nikon, Olympus. Printer companies like Sharp, and then
15 telecommunications companies like AT&T, as well as
16 handset-makers like HNB, a smaller one you may not have
17 heard of.

18 Q. And roughly what percentage of IV's revenues are
19 obtained outside of litigation?

20 A. Outside of litigation, I'd estimate about -- about 75
21 to 80 percent of our revenue is done on matters outside of
22 litigation.

23 Q. And roughly, what is the total value of licensing deals
24 you've negotiated over the years?

25 A. Personally, including my time at Micron, as well as at

1 IV, I'd say it's right under \$1.5 billion.

2 Q. Let's talk a little bit about Intellectual Ventures.

3 Could you tell us something about the history of the
4 company.

5 A. Yes. It was founded by a gentleman named Nathan
6 Myhrvold. Technically, it's Dr. Nathan Myhrvold, or
7 Dr.-Dr. Nathan Myhrvold. He has a couple of Ph.D.s. A
8 prolific inventor in his own right. He owns over 800
9 patents, and that number continues to grow.

10 He was formerly the chief technology officer at
11 Microsoft and was one of the early employees at Microsoft
12 with Paul Allen and Bill Gates.

13 One of the things he did was he was responsible --
14 his team was responsible for the Windows operating system
15 and for moving Windows forward at Microsoft.

16 Q. So you've mentioned two Intellectual Ventures companies
17 already, Intellectual Ventures Management and Intellectual
18 Ventures I LLC. Could you describe whether there's a
19 single overarching theme to IV's business?

20 A. There is. And Dr. Myhrvold kind of had an idea that
21 invention is valuable, right? Innovations are valuable.
22 And he wanted to unlock that in a number of different ways.

23 So he set up Intellectual Ventures, which has
24 different companies within it, each of which tries to get
25 at the value of inventions in different ways.

1 In one company, we have some of the world's best
2 minds come in -- into Intellectual Ventures, and we do our
3 own inventing, whether it's nuclear power reactors or new
4 types of antenna technologies. And we spin those ideas out
5 as new companies that develop these products.

6 Another part of Intellectual Ventures tries to
7 unlock value in innovation to help problems in the third
8 world, so kind of doing good through inventing and doing
9 things like finding new ways of transporting vaccines to
10 help cure Ebola or malaria in the third world.

11 Q. You have a book in front of you there with just a
12 couple of exhibits in it. The first three should be PTX-1,
13 2, and 3.

14 Do you see that?

15 A. Yes, I do.

16 Q. And what are those?

17 A. These are the patents that have been asserted in this
18 litigation.

19 Q. And who owns those patents today?

20 A. Those companies -- those patents are owned by
21 Intellectual Ventures I LLC. Intellectual Ventures I, or
22 we always call it our IIF, all sort of acronyms, is another
23 part of our Intellectual Ventures family of companies where
24 they invest in other people's inventions and purchase
25 patents and license those patents.

1 THE COURT: Let me interrupt for a minute.

2 Ladies and gentlemen, we're going to take a short
3 recess at this juncture. This will probably be the last
4 one for the day, and you may simply close and leave your
5 notebooks in your chairs.

6 Follow all the instructions I've given you,
7 including not to discuss the case among yourselves. And
8 I'll try to keep this to 10 minutes or less, but we'll make
9 a short recess at this point.

10 The jury's excused for recess.

11 COURT SECURITY OFFICER: All rise.

12 (Jury out.)

13 THE COURT: The Court stands in recess.

14 COURT SECURITY OFFICER: All rise.

15 (Recess.)

16 COURT SECURITY OFFICER: All rise.

17 THE COURT: Be seated, please.

18 All right. Let's bring in the jury.

19 COURT SECURITY OFFICER: All rise.

20 (Jury in.)

21 THE COURT: Please be seated, ladies and
22 gentlemen.

23 Mr. Black, please continue with your examination.

24 MR. BLACK: Thank you, Your Honor.

25 Q. (By Mr. Black) Mr. Paschke, before we went on the

1 break, we were about to start talking about IV's business
2 model.

3 Could you describe to me how IV goes about
4 acquiring patents?

5 A. Sure. When we -- when we purchase patents and
6 inventions that those patents represent, what we have done
7 is we've established a company that collected investment
8 money from a number of sources, companies, individuals, big
9 institutions.

10 They've all invested in this company. We take
11 that money, and we go out, and we try and identify
12 inventions and the patents that back those inventions out
13 in the world that we think would make a good investment,
14 something that we can buy at a low price and license
15 hopefully at some point in the future at a very attractive
16 price for our investors.

17 Q. (By Mr. Black) Now, we've got a slide, I think, with
18 some of those investors on it. What do we see here?

19 A. These are some of the investors in the Intellectual
20 Ventures patent investment funds.

21 Q. And if you just read off some of the -- some of the
22 names here that are more familiar?

23 A. Sure. Some of the large companies that have invested
24 include Microsoft, Cisco, Amazon, eBay, Nokia, Sony,
25 Verizon.

1 Then there are other, you know, universities and
2 pension funds that have also invested -- simply invested
3 money trying to get a return on their investment, just like
4 investing in a stock market fund or investing in a real
5 estate fund.

6 Q. And how about the -- so the money comes in from the
7 investors, and then you buy patents with it?

8 A. That's right. We have a team -- probably at its
9 height, there was hundreds of engineers, scientists,
10 technologists, patent attorneys that go out and scour the
11 world trying to find diamonds in the rough, if you will,
12 ideas and patents that we can find that we think some day
13 are going to have tremendous promise and be, quite frankly,
14 very valuable.

15 That's our business model. We want to find those
16 valuable patents out in the world.

17 Q. Okay. Let's talk about telecommunications industry.

18 Have you been active in licensing in that space?

19 A. We have, yes.

20 Q. So let's just define a few terms. What's a carrier?

21 A. A carrier is a company that most people think about
22 when they buy their phone, companies like AT&T or Verizon,
23 T-Mobile, Sprint.

24 These are the companies that actually provide
25 the cell phone service to someone, an end-user, who has a

1 cell phone.

2 Q. So how many major cellular carriers are there right
3 now?

4 A. I think of it as three. There's really four, so there
5 is AT&T, Verizon, and then there's T-Mobile and Sprint.

6 They are in discussions as -- to merge into one
7 company. That's why I think of them as one. But there's
8 technically four companies.

9 MR. BLACK: Your Honor, may I approach?

10 THE COURT: You may.

11 MR. BLACK: Does anyone want to join me?

12 MS. SMITH: I thought you were approaching the
13 witness.

14 (Bench conference.)

15 THE COURT: Why don't we say from now on: May I
16 approach the bench --

17 MS. SMITH: I apologize for the confusion and
18 didn't --

19 THE COURT: -- or the witness, that way we'll
20 know.

21 MR. BLACK: I was ambiguous.

22 THE COURT: Whoa, one at a time.

23 Mr. Black?

24 MR. BLACK: We need to put up the AT&T agreement
25 which is confidential, so we request to seal the courtroom.

1 THE COURT: All right.

2 MR. BLACK: That's at the end of his testimony.
3 I've arranged it so we'll go through the agreements that
4 are confidential through the end. It should be 10 minutes.
5 It's confidential agreement. I think it meets the standard
6 for --

7 THE COURT: I gather there's no problem?

8 MS. SMITH: No, Your Honor.

9 THE COURT: Let's proceed.

10 (Bench conference concluded.)

11 THE COURT: All right. At counsel's request, I'm
12 going to order the courtroom sealed at this time.

13 If you are present in the courtroom and not
14 subject to the protective order that's been entered in this
15 case, you should exit the courtroom, and remain outside
16 until the courtroom is unsealed and you're invited to
17 return.

18 (Courtroom sealed.)

19 (Sealed Portion No. 1 saved in separate sealed
20 transcript.)

21 (Courtroom unsealed.)

22 THE COURT: While I'm doing that, counsel,
23 approach the bench, please.

24 (Bench conference.)

25 THE COURT: What's your cross going to be,

1 Ms. Smith?

2 MS. SMITH: I can't guarantee I'm not going to go
3 past 6:00, depending how smoothly it comes in. I mean, I
4 anticipate I may be playing some video.

5 THE COURT: All right. And do I understand, we
6 have deposition witnesses after this one?

7 MR. BLACK: Correct.

8 THE COURT: Do you have any idea how long those
9 depositions are in total?

10 MR. BLACK: About 30 minutes.

11 MR. WARD: 30 to 40 minutes.

12 THE COURT: Total?

13 MR. WARD: Total.

14 THE COURT: Okay. Let's pick up with your cross
15 first thing in the morning.

16 MS. SMITH: Thank you, Your Honor.

17 Your Honor, I had one other issue. The witness
18 suggested that litigation only happens when licensing
19 breaks down.

20 I think that opens the door under the MIL because
21 they had no prior contact with Ericsson prior to filing
22 this suit.

23 THE COURT: Which MIL, Ms. Smith?

24 MS. SMITH: I don't recall what the number is.

25 THE COURT: Let's take it up first thing in the

1 morning.

2 MS. SMITH: Thank you. I appreciate it, Your
3 Honor.

4 (Bench conference concluded.)

5 THE COURT: Ladies and gentlemen, given the
6 cross-examination that's necessary of this witness, we're
7 going to stop for the evening at this juncture.

8 I'm going to ask you to take your notebooks with
9 you, leave them in the jury room closed and on the table in
10 the jury room.

11 I'll also remind you what I told you earlier.
12 Unless you live alone, somebody's going to ask you about
13 what's happened today in federal court when you get home.
14 Don't try to answer that. Don't discuss the case with
15 anyone in any way.

16 Follow all the instructions I've given you. I'd
17 like you back so that we can start promptly at 8:30 in the
18 morning. Travel safely to your homes. And with that,
19 you're excused for the evening.

20 COURT SECURITY OFFICER: All rise.

21 (Jury out.)

22 THE COURT: All right. Be seated, please.

23 Mr. Paschke, you can step down.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Counsel, I remind you that before I

1 bring the jury in in the morning, I'm going to ask a
2 representative of each side to read into the record those
3 items from the list of pre-admitted exhibits used during
4 today's portion of the trial. Be prepared to do that. We
5 will do that before 8:30 in the morning.

6 Also, I remind you of your continuing efforts to
7 thoroughly and candidly meet and confer on any issues
8 regarding demonstratives or other issues.

9 If there are disputes that are not resolved
10 through that process, we'll follow the same procedure this
11 evening and tomorrow morning that we followed yesterday
12 evening and this morning.

13 And I'll be in chambers by or before 7:30 in the
14 event you need guidance from me on anything that survives
15 that meet and confer process.

16 All right. With that, are there any questions
17 that need to be raised from either Plaintiff or Defendant
18 before we recess for the evening?

19 MR. WARD: Nothing from the Plaintiff.

20 THE COURT: Anything from Defendants?

21 MR. KUBEHL: Nothing from Defendants.

22 THE COURT: We stand in recess until tomorrow
23 morning.

24 COURT SECURITY OFFICER: All rise.

25 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/20

2/4/19
Date